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## State Water Resources Control Board

### **NOTICE OF PROPOSED EMERGENCY RULEMAKING**

#### **Revision and Readoption of Emergency Actions to Establish Minimum Instream Flow Requirements, Curtailment Authority, and Information Order Authority in the Mill Creek and Deer Creek Watersheds (Emergency Regulation)**

**In Title 23, Division 3, Chapter 2, Article 24 of the California Code of Regulations, Renew Sections 876.5, 876.7, and 878.4 and Amend and Renew Sections 878.1 and 879**

**August 5, 2022**

#### **Required Notice of Proposed Emergency Action**

Government Code section 11346.1, subdivision (a)(2), requires that, at least five working days prior to the submission of a proposed emergency action to the Office of Administrative Law (OAL), the adopting agency must provide a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action with the agency. This document provides the required notice. After the submission of the proposed emergency regulation to OAL, OAL shall allow interested persons five calendar days to submit comments on the proposed emergency regulation as set forth in Government Code section 11349.6.

#### **Proposed Emergency Action**

California and the entire western United States are facing a significant drought in the wake of one of the driest periods on record, driven by climate change and extreme hydrologic conditions over the past three years. Water supply in many parts of California, including the Sacramento River watershed, is insufficient to meet a significant portion of water demands, including ecological needs. The water supply shortage is a particular concern in Mill Creek and Deer Creek, which are tributaries to the Sacramento River, and which provide high priority habitat for listed salmonid species. Addressing the severe water shortage in Mill and Deer creeks requires urgent action to ensure water supplies are and will remain available to meet minimum instream flows for fish passage, as well as for human health and safety needs.

On April 21, 2021, Governor Gavin Newsom issued a Proclamation of a State of Emergency in response to drought conditions in the Russian River watershed ([April 2021 Proclamation](#)). On May 10, 2021, Governor Newsom expanded his April 2021 emergency drought proclamation to cover 41 counties in California, including the Sacramento-San Joaquin Delta watershed, which includes the Mill Creek and Deer Creek watersheds in Tehama County ([May 2021 Proclamation](#)). On March 28, 2022, Governor Newsom signed an executive order acknowledging the continued drought conditions throughout the state, extending the authorities and directives of the April 2021 Proclamation, and calling for increased conservation efforts (2022 Drought Executive Order). The proposed 2022 readoption and amendment of the Emergency Regulation would renew the State Water Board's emergency response to conditions in Mill and Deer Creeks with certain amendments. To ensure critical instream flows for species protection, the May 2021 Proclamation directs the State Water Resources Control Board (State Water 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 watersheds in which a drought state of emergency was proclaimed and to work with water users and other parties on voluntary measures to implement those actions. To the extent that voluntary actions are not sufficient, the State Water Board, in coordination with CDFW, is to consider emergency regulations to establish minimum drought instream flows. For purposes of approving an emergency regulation pursuant to this directive, the May 2021 Proclamation suspends the California Environmental Quality Act (CEQA) in Public Resources Code, Division 13 (commencing with section 21000) and regulations adopted pursuant to that Division.

Water Code section 1058.5 provides the State Water Board the authority to adopt emergency regulations in certain drought years or when the Governor proclaims a drought state of emergency in order to, among other things, prevent the unreasonable use of water, require curtailment of diversions when water is not available under the diverter's priority of right, or require monitoring and reporting of diversion or use.

The Drought Emergency Regulation for Mill and Deer creeks that the State Water Board adopted on September 22, 2021, and which became effective on October 4, 2021, will expire on October 4, 2022, without further action by the Board. The proposed 2022 readoption with minor amendments would renew necessary specific drought regulation sections, with minor amendments to address stockwatering needs during pulse flows authorized pursuant to the regulation.

In general, this renewed emergency regulation would provide the State Water Board the tools it needs to:

1. Establish emergency drought minimum flow requirements to protect threatened Central Valley spring-run Chinook salmon (CV SR salmon) and threatened California Central Valley steelhead (CCV steelhead);
2. Ensure continued access to water supplies for minimum health and safety needs;
3. Provide a path for local cooperative solutions to more effectively support flow and fishery needs;
4. Prohibit inefficient domestic lawn watering practices;

5. Allow limited diversions during scheduled pulse flows to support livestock survival; and
6. Require curtailment order reporting.

The proposed emergency curtailment regulation will provide minimum passage flows for CV SR Salmon and CCV Steelhead, which are listed as threatened under the Endangered Species Act (16 U.S.C. § 1533(b) et seq.) (ESA) and the California Endangered Species Act (Fish & G. Code, § 2050 et seq.) (CESA), on Mill Creek and Deer Creek during critical migratory periods, which are consistent with flow requirements adopted during the previous drought years of 2021, 2015, and 2014. Additionally, the proposed regulation would provide for exceptions to curtailment for minimum human health and safety needs and would allow for voluntary local cooperative solutions in lieu of curtailment orders. To increase the amount of diverted water available for economic and fishery use in this drought emergency, the proposed regulation also establishes limitations for domestic lawn irrigation consistent with California Code of Regulations, title 23, section 697.

### **Proposed Text of Emergency Regulations**

On August 5, 2022 the State Water Board released the proposed regulation for adoption, with comments due on August 11, 2022. Staff are proposing minor amendments to the regulation language adopted in 2021. The proposed text of the emergency regulation is included below starting on page 7.

### **Finding of Emergency (Gov. Code § 11346.1 subd. (b))**

The State Water Board finds that an emergency continues to exist due to the third consecutive year of severe drought conditions, as identified in the Governor's drought emergency proclamations.<sup>1</sup> Persistent dry conditions require immediate action to put in place drought emergency minimum fisheries flows in the Mill Creek and Deer Creek watersheds, and to effectively and efficiently administer and enforce the State's water rights system to meet those flows in light of severely limited water availability in those watersheds during the current drought. Immediate action is needed to ensure reasonable use of water, including prohibiting the flood irrigation of domestic lawns that is unreasonable in light of limited water availability during the drought. Current regulations do not provide for bare minimum fisheries flows in the Mill Creek and Deer Creek watersheds, specifically the minimum passage flows needed by CV SR Salmon and CCV Steelhead on Mill Creek and Deer Creek during critical migratory periods.

The State Water Board is unable to address the situation through non-emergency regulations because the need for this regulation has arisen due to the current drought emergency and would not be appropriately or timely addressed by non-emergency regulations. Non-regulatory efforts have thus far been insufficient on their own to provide a minimum level of protection for these ESA-listed species during these drought conditions.

More information regarding the State Water Board's finding of emergency can be found in the Emergency Regulation Informative Digest available on the [Mill Creek and Deer Creek Drought Response website](#).

<sup>1</sup> Under Water Code section 1058.5, subdivision (b), the State Water Board's finding of emergency made in connection with this proposed emergency regulation is not subject to review by the Office of Administrative Law.

**Authority and Reference** (Gov. Code, § 11346.5, subd. (a)(2))

Water Code sections 1058 and 1058.5 provide authority for the emergency regulation. The proposed regulation implements, interprets, or makes specific Article X, section 2 of the California Constitution, and sections 100, 100.5, 104, 105, 106.3, 109, 187, 275, 348, 1011, 1011.5, 1051, 1052, 1055, 1058.5, 1253, 1825, 1831, 1841, and 5106 of the Water Code. The proposed regulation also interprets and implements the State Water Board's authority to prevent the unreasonable use of water, described in *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, *EDF v. EBMUD* (1980) 26 Cal.3d 183, and *El Dorado Irrigation Dist. v. State Water Resources Control Board* (2006) 142 Cal.App.4th 937.

Additional detail regarding the authority and references associated with the proposed regulation can be found under each section of the proposed regulation text available on the [Mill Creek and Deer Creek Drought Response website](#).

**Informative Digest** (Gov. Code, § 11346.5, subd. (a)(3))

The Mill Creek and Deer Creek watersheds are located in Tehama County. The watersheds provide water for agriculture, domestic uses, power, stockwatering, fire protection, recreation, and the environment. These watersheds have been identified as high-priority tributaries for the protection and recovery of wild populations of CV SR salmon and CCV steelhead which are listed as threatened under the state and federal Endangered Species Acts. Ensuring water is available to meet minimum human health and safety needs, notwithstanding the shortage conditions, is also of the utmost importance.

Under existing law, a water right holder is prohibited from diverting from a watercourse unless flows are available under their priority of right. Additionally, no water right extends to the use of water in a manner that is unreasonable under the circumstances of the diversion, per Article X, section 2 of the California Constitution. Reasonable use determinations under Article X, section 2 must consider the multiple uses of water in a system, including instream uses for fishery purposes. Water Code section 106.3 declares a state policy that every human being has the right to safe, clean, affordable, and accessible water for human consumption, cooking, and sanitation purposes. In normal times, the State Water Board can implement the requirements of the water right priority system and reasonable use requirements through its enforcement authorities (including the ability to impose civil liabilities or issue cease and desist orders through a notice and hearing process), through its permitting and licensing authorities for surface waters and subterranean streams, or through the adoption of permanent regulations. However, in a large-scale drought emergency, such as the present situation, existing authorities are insufficient because of the resources and time required to implement water law requirements.

Additional efforts are needed in this drought to ensure that water right holders and claimants in these watersheds without other means of accessing water supplies for basic human health and safety can continue to divert water, even under critical drought conditions.

It is imperative that water right holders and claimants, who do not have water available at their priority of right and do not provide water for minimum human health and safety needs, cease diversions of water that is needed for minimum instream flows to protect fish and more senior water rights, or implement other actions designed to provide equivalent or better protection to the fishery. Specifically, immediate action is needed to ensure the reasonable use of water in the Mill Creek and Deer Creek watersheds – two high priority tributaries to the Sacramento River that provide critically important habitat for threatened CV SR salmon and CCV steelhead. An emergency regulation will enable the State Water Board to enforce the water right priority system with respect to all water right holders and claimants in a timely manner, prohibit flood irrigating domestic lawns as an unreasonable use during the current drought emergency condition, and protect critical water supply needed for the protection of listed fish species' migration and for minimum health and safety needs.

More detailed information regarding existing laws, the need for the proposed regulation, and the anticipated effect of the proposed regulation, as well as the list of Information Relied-on and the Fiscal Impact Statement, can be found in the [Proposed Emergency Regulation and Informative Digest](#).

**Other Matters Prescribed by Statute** (Gov. Code, § 11346.5, subd. (a)(4))

The proposed emergency regulation would be adopted to require curtailment of diversion when water is not available under diverters' priority of right, to prevent an unreasonable use of water, and to require reporting of information needed to implement and enforce curtailments. The proposed emergency regulation would be adopted in response to conditions which exist, or are threatened, in a critically dry year immediately preceded by two or more consecutive below normal, dry, or critically dry years or during a period for which the Governor has issued a proclamation of a state of emergency under the California Emergency Services Act (chapter 7 (commencing with section 8550) of Division 1 of title 2 of the Government Code) based on drought conditions.

**Local Mandate** (Gov. Code, § 11346.5, subd. (a)(5))

The proposed emergency regulation does not impose a mandate on local agencies or school districts because it does not mandate a new program or a higher level of service of an existing program. The regulation is generally applicable to public and private entities, and is not unique to local government. No state reimbursement is required by part 7 (commencing with section 17500) of Division 4 of the Government Code.

**Estimate of Cost or Savings** (Gov. Code, § 11346.5, subd. (a)(6))

The effects resulting from the proposed emergency regulation for Mill and Deer creek watersheds are the costs and savings to state and local government agencies, pursuant to Government Code section 11346 et seq. This Fiscal Impact Statement has been prepared in accordance with State Administrative Manual 6600-6616.

The fiscal effect on local and state government agencies as a result of the proposed emergency regulation includes: (1) the costs to complete and submit certification forms; (2) revenue losses and other costs for public water supply agencies; and (3) state and local tax revenue losses.

The State Water Board conservatively estimates the total cost to all state and local agencies (including city, county, schools and publicly owned water suppliers) due to the proposed emergency regulation as \$319,443. The total reporting cost for all state and local agencies to complete and submit initial compliance certification forms and ongoing diversion reporting for the curtailment order is estimated to be \$130. This is a conservative estimate given that it assumes that all water users will be required to submit a curtailment certification form again, but only those who have not submitted a form already would be required to do so. Total revenue losses for the one public water supply agency affected by the regulation are estimated to be \$133,110, and additional costs for conservation and enforcement are estimated to be \$66,550. Total state and local tax revenue losses are estimated to be \$119,663, including \$115,714 to state government and \$3,949 to local government. The overall total fiscal impacts to state government are estimated to be up to \$115,779, and to local government are estimated to be up to \$203,664.

More detailed information regarding the cost or savings of the proposed emergency regulation can be found in the Fiscal Impact Statement, Appendix 1 of the Emergency Regulation Informative Digest, which is available on the [Mill Creek and Deer Creek Drought Response website](#). Information related to readoption can be accessed by expanding the banner in the Drought Response Topics section titled “2022 Emergency Regulation Readoption Process”.

# **Curtailment of Diversions on Mill and Deer Creeks Due to Insufficient Flow for Specific Fisheries**

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In Title 23, Division 3, Chapter 2, Article 24, add Sections 876.5, 876.7, and 878.4, and amend Sections 878.1 and 879 to read:

## **Article 24. Curtailment of Diversions due to Drought Emergency**

### **§ 876.5 Emergency Curtailments Due to Lack of Water Availability in Certain Watersheds**

The State Water Board has determined that it is an unreasonable use under Article X, section 2 of the California Constitution to continue diversions that would cause or threaten to cause flows to fall beneath the drought emergency minimum flows listed in subdivision (c), except as provided in section 878.1, and subdivision (b).

- (a) For the protection of threatened and endangered fish, no water shall be diverted from the streams listed below during the effective period of a curtailment order under this article, except as provided under sections 878, 878.1 or 878.4.
  
- (b) The 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). Curtailment orders shall be effective the day after issuance. Except as provided in this subdivision and in sections 878, 878.1, and 878.4, where flows are sufficient to support some but not all diversions, curtailment shall be required in order of water right priority.

In determining which diversions should be subject to curtailment, the Deputy Director shall take into account the need to provide reasonable assurance that the actual drought emergency minimum flows will be met.

If maintaining the flows described in subdivision (c) would require curtailment of uses described in section 878.1, then the State Water Board's Executive Director may decide whether or not those diversions should be allowed to continue based on the most current information available regarding fish populations, health and

safety needs, and the alternatives available to protect both public health and safety and threatened or endangered fish.

Unless the California Department of Fish and Wildlife or the National Marine Fisheries Service objects, the Deputy Director shall approve a petition for a limited exception to curtailment for minimum stockwatering needs during a pulse flow event upon a determination by the Deputy Director that the petitioner has demonstrated that curtailing diversions to achieve the pulse flows described in subdivisions (c)(1)(C)(ii), (c)(1)(D)(i), (c)(2)(C)(ii), or (c)(2)(D)(i) would likely impair livestock survival, and that there are no reasonable water supply alternatives available (e.g. stockponds, groundwater wells, hauled water).

- (c) The State Water Board has authority to ensure the protection and preservation of streams and to limit diversions to protect critical flows for species, including for state and federally threatened and endangered salmon and steelhead species. To prevent the waste and unreasonable use of water, the Deputy Director may issue curtailment orders as described in subdivision (b). The flows described in this subdivision may be less than otherwise desirable minimum flows for fisheries protection, but have been developed to ensure bare minimum instream flows for migratory passage during the drought emergency, given the extreme nature of the current drought and the drought impacts to these fisheries.

This section shall only go into effect if the Executive Director determines that any agreements in any applicable watersheds entered into by diverters, National Marine Fisheries Service and California Department of Fish and Wildlife either do not cover substantially all of the water diverted in the watershed or that the agreements are no longer in effect.

- (1) Mill Creek. Mill Creek enters the Sacramento River at Army Corps of Engineers river mile 230 from the east near Los Molinos and approximately one mile north of the town of Tehama. All water right holders in the Mill Creek Watershed are subject to curtailment pursuant to subdivision (b) and responsible to meet the drought emergency minimum flows identified in this subdivision. For purposes of this article, the following flows are the drought emergency minimum flows necessary for migratory passage of state and federally listed Central Valley spring-run Chinook salmon (CV SR salmon) and federally listed California Central Valley steelhead (CCV steelhead) through the Sacramento Valley floor stream reaches in Mill Creek:

- (A) October 15 - March 31, if Adult CCV Steelhead are present –
  - (i) Base Flows – 50 cubic-feet per second (cfs) or full flow without diversions, whichever is less.
  
- (B) October 15 – June 30, if Juvenile CV SR Salmon or Juvenile CCV Steelhead are present and Adult CV SR Salmon or Adult CCV Steelhead are not present –
  - (i) Base Flows – 20 cfs or full flow without diversions, whichever is less.
  
- (C) April 1 up to June 15, if Adult CV SR Salmon are present –
  - (i) Base Flows – 50 cubic feet per second (cfs) or full flow without diversions, whichever is less.
  
  - (ii) Pulse Flows – 100 cfs or full flow without diversions, whichever is less. A flow ramp down period at the end of a pulse flow may be included if requested by the California Department of Fish and Wildlife or the National Marine Fisheries Service. Pulse flows may be required when adult CV SR salmon are observed between Ward Dam and the Sacramento River. When required, pulse flows are in lieu of, not in addition to, base flow requirements. Pulse flows will last a minimum of 24 hours to a maximum of 72 hours, and will be determined based on the presence of fish observed and desired migration movements upstream. Pulse flow duration will be determined by the Deputy Director in consultation with California Department of Fish and Wildlife or the National Marine Fisheries Service. The flow ramp down period is part of the pulse flow period. Pulse flows may be required if either of the following conditions occurs prior to the end of the migration period:
    - A. The average daily full natural flow measured at the United States Geological Survey Mill Creek Near Los Molinos CA gauge (MLM/#11381500) is 100 cfs or less for three consecutive days; or
    - B. The California Department of Fish and Wildlife or the National Marine Fisheries Service submits a request to provide the pulse flow and it is approved by the Deputy Director.

- (D) June 1 up to June 15, if Juvenile CV SR Salmon or Juvenile CCV Steelhead are present –
- (i) Pulse Flows – 100 cfs or full inflow without diversions, whichever is less. A flow ramp down period at the end of a pulse flow may be included if requested by the California Department of Fish and Wildlife or the National Marine Fisheries Service. Pulse flows may be required when juvenile CV SR salmon or CCV steelhead are observed in the lower reaches of Mill Creek. When required, pulse flows are in lieu of, not in addition to, base flow requirements. Pulse flows will last a minimum of 24 hours to a maximum of 48 hours, and will be determined based on the presence of fish observed and desired migration movements downstream into the Sacramento River. Pulse flow duration will be determined by the Deputy Director in consultation with the California Department of Fish and Wildlife or the National Marine Fisheries Service. The flow ramp down period is part of the pulse flow period. Pulse flows may be required if both of the following occur:
    - A. The California Department of Fish and Wildlife or the National Marine Fisheries Service conducts field surveys and observes juvenile CV SR salmon or CCV steelhead in the lower reaches of Mill Creek in June; and
    - B. The California Department of Fish and Wildlife or the National Marine Fisheries Service submits a request to provide the pulse flow and it is approved by the Deputy Director.
- (E) The California Department of Fish and Wildlife or the National Marine Fisheries Service may conduct field surveys and notify the Deputy Director when the pertinent migration periods have ended. Upon such notice, the Deputy Director shall, no later than the next business day, suspend relevant portions of curtailment orders that are based on the need for a particular flow volume when presence of adult or juvenile CV SR salmon and CCV steelhead no longer supports the need for the required flows. The Deputy Director may independently determine that hydrologic conditions no longer support the need for the required flows, and suspend relevant portions of curtailment orders.

(F) The California Department of Fish and Wildlife or the National Marine Fisheries Service may conduct field surveys and notify the Deputy Director that the pertinent migration periods have not yet begun. The Deputy Director may choose not to issue curtailment orders for purposes of meeting the drought emergency minimum flows identified in this subdivision if these agencies have determined that fish are not present and in need of the identified flows.

(2) Deer Creek. Deer Creek enters the Sacramento River at Army Corps of Engineers river mile 220 from the east approximately one mile west of the town of Vina. All water right holders in the Deer Creek Watershed are subject to curtailment pursuant to subdivision (b) and responsible to meet the drought emergency minimum flows identified in this subdivision. For purposes of this article, the following flows are the drought emergency minimum flows necessary for migratory passage of state and federally listed CV SR salmon and federally listed CCV steelhead through the Sacramento Valley floor stream reaches in Deer Creek:

(A) October 15 - March 31, if Adult CCV Steelhead are present –

(i) Base Flows – 50 cfs or full flow without diversions, whichever is less.

(B) October 15 – June 30, if Juvenile CV SR Salmon or Juvenile CCV Steelhead are present and Adult CV SR Salmon or Adult CCV Steelhead are not present –

(i) Base Flows – 20 cfs or full flow without diversions, whichever is less.

(C) April 1 up to June 15, if Adult CV SR Salmon are present –

(i) Base Flows – 50 cfs or full flow without diversions, whichever is less.

A. Pulse Flows – 100 cfs or full flow without diversions, whichever is less. A flow ramp down period at the end of a pulse flow may be included if requested by the California Department of Fish and Wildlife or the National Marine Fisheries Service. Pulse flows may be required when adult CV SR salmon are observed between Vina Dam and the Sacramento River. When required, pulse flows are in lieu of, not in addition to, base flow requirements. Pulse flows will last a

minimum of 24 hours to a maximum of 72 hours, and will be determined based on the presence of fish observed and desired migration movements upstream. Pulse flow duration will be determined by the Deputy Director in consultation with the California Department of Fish and Wildlife or the National Marine Fisheries Service. The flow ramp down period is part of the pulse flow period. Pulse flows may be required if either of the following conditions occur prior to the end of the migration period: The average daily flow measured at the United States Geological Survey Deer Creek Near Vina CA gauge (#11383500) is 100 cfs or less for three consecutive days; or

- B. The California Department of Fish and Wildlife or the National Marine Fisheries Service submits a request to provide the pulse flow and it is approved by the Deputy Director.

(D) June 1 up to June 15, if Juvenile CV SR Salmon or Juvenile CCV Steelhead are present –

- (i) Pulse Flows – 100 cfs or full inflow without diversions, whichever is less. A flow ramp down period at the end of a pulse flow may be included if requested by California Department of Fish and Wildlife or National Marine Fisheries Service. Pulse flows may be required when juvenile CV SR salmon or CCV steelhead are observed in the lower reaches of Deer Creek. When required, pulse flows are in lieu of, not in addition to, base flow requirements. Pulse flows will last a minimum of 24 hours to a maximum of 48 hours, and will be determined based on the presence of fish observed and desired migration movements downstream into the Sacramento River. Pulse flow duration will be determined by the Deputy Director in consultation with California Department of Fish and Wildlife or the National Marine Fisheries Service. The flow ramp down period is part of the pulse flow period. Pulse flows may be required if both of the following occur:

- A. The California Department of Fish and Wildlife or the National Marine Fisheries Service conducts field surveys and observes juvenile CV SR salmon or CCV

steelhead in the lower reaches of Deer Creek in June;  
and

- B. The California Department of Fish and Wildlife or the National Marine Fisheries Service submits a request to provide the pulse flow and it is approved by the Deputy Director.
  - (E) The California Department of Fish and Wildlife or the National Marine Fisheries Service may conduct field surveys and notify the Deputy Director when the pertinent migration periods have ended. Upon such notice, the Deputy Director shall, no later than the next business day, suspend relevant portions of curtailment orders that are based on the need for a particular flow volume when presence of adult or juvenile CV SR salmon and CCV steelhead no longer supports the need for the required flows. The Deputy Director may independently determine that hydraulic conditions no longer support the need for the required flows, and suspend relevant portions of curtailment orders.
  - (F) The California Department of Fish and Wildlife or the National Marine Fisheries Service may conduct field surveys and notify the Deputy Director that the pertinent migration periods have not yet begun. The Deputy Director may choose not to issue curtailment orders for purposes of meeting the drought emergency minimum flows identified in this subdivision if these agencies have determined that fish are not present and in need of the identified flows.
- (3) The drought emergency minimum flows identified in subdivision (c)(1) and (c)(2) shall extend through the confluences with the Sacramento River. Compliance with the drought emergency minimum flows will be determined by the Deputy Director, measured at the most downstream gauge available. The Deputy Director may require additional compliance points as needed.
- (c) (1) Initial curtailment orders will be mailed to each water right holder or the agent of record on file with the Division of Water Rights. The water right holder or agent of record is responsible for immediately providing notice of the order(s) to all diverters exercising the water right.

- (2) The State Board has established an email distribution list that water right holders may join to receive drought notices and updates regarding curtailments. Notice provided by email or by posting on the State Water Board's drought web page shall be sufficient for all purposes related to drought notices and updates regarding curtailments.

Authority: Sections 1058, 1058.5, Water Code

Reference: Cal. Const., Art. X, § 2; Sections 100, 100.5, 104, 105, 275, 1058.5, Water Code; *El Dorado Irrigation Dist. v. State Water Resources Control Board* (2006) 142 Cal.App.4th 937; *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.

### **§ 876.7 Limitation on Inefficient Domestic Lawn Irrigation**

- (a) Inefficient surface water uses in the Mill Creek and Deer Creek Watersheds for domestic lawn watering, which result in excessive water diversion for a small amount of water used for beneficial use are not reasonable in light of the alternatives available and needs of the fishery. For the purposes of this regulation, inefficient surface water use for domestic lawn watering are those that use more than 18.5 gallons per day per 100 square feet, a reasonable water quantity set forth in Article 5, section 697.

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.

### **§ 878.4 Local Cooperative Solutions**

If the National Marine Fisheries Service and the California Department of Fish and Wildlife enter into an agreement with a diverter or diverters, that the National Marine Fisheries Service or the California Department of Fish and Wildlife determines provides watershed-wide protection for the fishery that is comparable

to or greater than that provided by section 876.5, the diverter or diverters may request approval from the Deputy Director to implement the agreement in place of State Board-issued curtailment orders under section 876.5. The Deputy Director shall approve the request so long as other users of water will not be injured.

The Deputy Director's approval may be subject to any conditions, including reporting requirements, that the Deputy Director determines to be appropriate to assure that no other users of water will be injured and that the flows in the agreements will occur. If the Deputy Director does not act on a request within one week of receipt, the request will be deemed approved.

Other local cooperative solutions may also be proposed to the Deputy Director as an alternative means of reducing water use to preserve drought emergency minimum flows. Requests to implement voluntary agreements to coordinate diversions or share water in place of State Water Board-issued curtailment orders under this article may be submitted to the Deputy Director at any time.

The Deputy Director may approve a request, or approve it subject to any conditions including reporting requirements that the Deputy Director determines to be appropriate, if the Deputy Director determines:

- (a) The continued diversion is reasonable;
- (b) That other users of water will not be injured; and
- (c) That the relevant minimum flows identified in this article will be met.

If a local solution is already in place at the time a curtailment order is issued, a diverter subject to a curtailment order must, within five days of issuance of the curtailment order, submit a petition to the Deputy Director and submit a certification under penalty of perjury that a petition has been filed as authorized under this section, the diversion will be authorized if the petition is approved, the subject water right authorizes the diversion in the absence of a curtailment order, and that diversion and use will comply with the conditions for approval of the petition, except that approval by other authorities may still be pending.

Diversions covered by an agreement approved by the Deputy Director to coordinate diversions or share water pursuant to this section are subject to this article and violations of such an approved agreement 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 Board's drought webpage. The Deputy Director may issue a decision under this article prior to providing notice. Any interested person may file an objection to the certification, petition or decision. The objection shall indicate the manner of service upon the certifier or petitioner. The State Board will consider any objection, and may hold a hearing thereon, after notice to all interested persons.

Authority: Sections 1058, 1058.5 Water Code

Reference: Sections 109, 1010, 1011, 1011.5, 1051.5, Water Code; *City of Barstow v. Mojave Water Agency* (2000) 23 Cal.4th 1224.