



Fact Sheet

Reference Guide on the Emergency Regulation and Curtailment Orders in the Sacramento-San Joaquin Delta (Delta) Watershed

This document is divided into sections addressing: 1) the regulation for [Enhanced Water Use Reporting and Curtailment of Diversions due to Lack of Water Availability in the Sacramento-San Joaquin Delta Watershed](#) (emergency regulation) adopted by the State Water Resources Control Board (State Water Board or Board) on August 3, 2021 and approved by the Office of Administrative Law (OAL) on August 19, 2021; 2) curtailment orders issued pursuant to the emergency regulation; 3) compliance actions; 4) exceptions and alternatives to curtailment; 5) due process considerations; 6) the enforcement process; and 7) additional information. A separate reference guide, Reference Guide on Emergency Regulation Reporting Requirements and Submission of Supporting Information in the Sacramento-San Joaquin Delta (Delta) Watershed, is available on the [Delta Drought and Curtailment Information](#) webpage with more information regarding the reporting requirements and any exceptions or alternatives related to curtailment orders issued pursuant to the emergency regulation.

Please read your curtailment order closely; this reference guide does not replace or supersede information in any curtailment order or the emergency regulation. If you cannot find an answer to your question, please contact State Water Board staff at Bay-Delta@waterboards.ca.gov or (916) 319-0960. This document may be updated with additional questions as needed.

1. Emergency Regulation

What is an emergency regulation?

As described by OAL, a state agency may adopt emergency regulations in response to a situation that calls for immediate action to avoid serious harm to public health, safety, peace, or general welfare. Emergency regulations may also be adopted when a statute deems a situation to be an emergency under the Administrative Procedure Act. 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 prevent the unreasonable use of water, to require curtailment of diversions when water is not available under the diverter's priority of right, or to require monitoring and reporting of diversion or use.



On August 3, 2021, the State Water Board adopted the [emergency regulation](#), which became effective on August 19, 2021. (Cal. Code Regs., tit. 23, §§ 876.1-879.2.¹)

Why did the State Water Board adopt the emergency regulation for the Delta watershed?

The emergency regulation enables the Board to enforce the water right priority system in a more timely manner, commensurate with the current drought emergency conditions, and to protect critical water storage needed for minimum human health and safety, salinity control in the Delta, and some ecosystem protection. Without this emergency regulation, the drinking water supply for 25 million Californians and the irrigation supply for millions of acres of farmland dependent on supplies from the Delta will be at significant risk.

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 or divert solely for non-consumptive uses) cease diversions of water that is needed for more senior rights or that was released from upstream reservoirs for use downstream.

What does the emergency regulation do?

The emergency regulation authorizes the State Water Board to issue curtailment orders requiring water right holders and claimants to stop diverting water under identified rights and claims when it is not available under their priority of right. The emergency regulation also authorizes the State Water Board to impose certain reporting requirements on water right holders and claimants in the Delta watershed. The information submitted in response to these reporting requirements will help the State Water Board refine and improve drought responses.

Pursuant to the emergency regulation, on August 20, 2021, the State Water Board issued an [Initial Order Imposing Water Right Curtailment and Reporting Requirements in the Sacramento-San Joaquin Delta Watershed](#) (August 20 Order or Order) to all water right holders and claimants in the Delta watershed, requiring compliance with specific water diversion curtailment and reporting requirements.

How long will the emergency regulation in the Delta watershed remain in effect?

Emergency regulations adopted under Water Code section 1058.5 remain in effect for up to one year. The emergency regulation became effective on August 19, 2021, and will expire automatically on August 19, 2022 unless readopted due to continued drought

¹ Unless otherwise noted, references are to title 23 of the California Code of Regulations.



emergency conditions. The emergency regulation could be repealed prior to August 19, 2022 if water supply conditions improve and the regulation is no longer necessary.

2. Curtailment Orders

What is a curtailment order?

A curtailment order is a directive from the State Water Board to stop all diversion of water under a specific water right or claim. Curtailment orders are subject to enforcement under the Water Code. The August 20 Order is authorized under the emergency regulation that went into effect on August 19, 2021.

How is a curtailment order different from a notice of water unavailability?

Curtailment orders are directives from the State Water Board to stop diverting water under specified rights or claims. Notices of water unavailability, on the other hand, indicate information available to the State Water Board shows that water is or is expected to be unavailable at a specific priority of right, but such notices are informational only. In addition to sharing information in the Board's possession about water unavailability, they notify right holders and claimants of their pre-existing obligations under California's water rights priority system. Unlike Notices, curtailment orders impose new obligations on their recipients.

How does the State Water Board determine curtailment status?

The State Water Board developed the Water Unavailability Methodology for the Delta Watershed to evaluate a variety of data and to support a determination of when water is not available for diversion at specific priorities and conditions of right. The Water Unavailability Methodology compares the best available supply data for the Delta watershed to the best available estimates of demands for the same areas. It evaluates water supplies and demands at the subwatershed scale² and watershed scale for both the Sacramento River and San Joaquin River watersheds on a monthly timestep. Visit the [Water Unavailability Methodology](#) webpage to learn more.

Why is my water right or claim curtailed if I can see water flowing in the river or stream?

Although diverters may see water flowing past their point of diversion, that water may be unavailable to them because the water: is needed to meet a more senior water right downstream, was released from storage for rediversion downstream under another

² In the methodology the Sacramento River and San Joaquin River watersheds and their tributaries are divided into multiple smaller regions, called subwatersheds, to allow granular analyses of regional water supply and diversions.

water right or contract, was released from storage to repel salt water from the ocean or to meet other requirements, or is needed to meet minimum health and safety water supply needs. Releases of previously stored water from reservoirs are critical for managing water quality in the tidal portions of the Delta—specifically, to prevent salt water from San Francisco Bay from intruding into the interior and southern Delta where it could harm sensitive ecosystems, agricultural lands, and the health, safety, and well-being of the two-thirds of Californians who typically receive a portion of their water from this region.

Can I use water stored in a reservoir if my water right is curtailed?

If you have access to water already stored in a reservoir, either pursuant to your own water right or a contract with the reservoir operator, you can continue to lawfully use this water as it is released from storage. Use of this water is not affected by the emergency curtailment regulation or the curtailment order. Separate from whether you have access to a source of stored water, if you hold a water right or claim in the Delta watershed, you still have to respond to the curtailment order and may have additional reporting requirements with respect to your water rights and claims in the Delta watershed.

How does curtailment work if I have multiple water rights that have different priorities of right (e.g., a riparian claim and a pre-1914 appropriative claim)?

If you have multiple water rights (under multiple water right IDs) that have different priorities of right, your junior (more recent) water right(s) will be curtailed before your senior water right(s). Please check the curtailment statuses of all of your water rights on the [Delta Drought and Curtailment](#) webpage before diverting.

If you claim both a riparian right and a pre-1914 appropriative right (under one water right ID), the Water Unavailability Methodology currently treats your water right claim as riparian for the purposes of curtailment under the emergency regulation. Riparian rights are also assumed to generally be senior to all appropriative rights under the current Water Unavailability Methodology. These assumptions may be further refined.

If you have multiple water rights for the same place of use, and each is subject to an order triggering enhanced reporting requirements, please do not duplicate reporting of the same water use under multiple rights. Generally, past diversions and projected demands should be reported under the most senior water right first.

How long will these curtailments remain in effect?

Curtailment orders imposed under the emergency regulation may remain in effect for the duration of the emergency regulation (up to one year, unless readopted). The State Water Board may permanently or temporarily suspend curtailments, in order of water right priority, when water availability increases or is projected to increase and/or due to

reductions in demand. Curtailments may be reimposed if flows are determined to be insufficient to support all diversions. You are responsible for monitoring changes to the curtailment status of your water right or claim by signing up for email updates (Delta Drought List at the State Water Board's [Email Lists](#) webpage under Water Rights) or by frequently visiting the [Delta Drought and Curtailment](#) webpage, where regular updates will be posted.

3. Compliance Actions

What are the primary steps I should take to comply with the August 20 Order?

- 1) Read the August 20 Order, titled "Initial Order Imposing Water Right Curtailment and Reporting Requirements in the Sacramento-San Joaquin Delta Watershed." There are two versions of the Order: one applicable to smaller diverters (annual use/right less than 5,000 acre-feet per year) and one applicable to large diverters (annual use/right of 5,000 acre-feet per year or greater). Both are available on the on the Board's [Delta Drought and Curtailment](#) webpage under Curtailment Orders.
- 2) Subscribe to the State Water Board's [Delta Drought email distribution list](#) (under Water Rights) and/or frequently check the [Delta Watershed Curtailment Status List](#) (Curtailment Status List) maintained on the Delta Drought webpage to monitor the curtailment status of your water right or claim.
- 3) Cease all diversions pursuant to your water right or claim in the event it is curtailed based on an order noticed by the Delta Drought email distribution list or as posted on the Curtailment Status List, if an exception does not apply (see exceptions to curtailment described in section 4 below).
- 4) Respond to the Order by completing the Delta Watershed Compliance Certification Form, located in the Board's [Water Right Form and Survey Submittal Portal](#) (Survey Portal), by September 3, 2021 certifying that you will:
 - a) Cease all diversions pursuant to your water right or claim for the applicable date range during which it is curtailed;
 - b) If applicable, file a human health and safety or non-consumptive use certification form for the relevant exception to curtailment for which you qualify, or submit other information to support another type of exception under the emergency regulation; and,
 - c) Subscribe to the Delta Drought email subscription list and/or frequently check the Curtailment Status List maintained on the Delta Drought and Curtailment webpage.

- 5) If your water right or claim has a face value or recent annual reported diversion volume of 5,000 acre-feet or greater, provide monthly reports of water diversion and use information for prior months and monthly reporting of projected water demand by completing the Delta Watershed Enhanced Reporting of Actual Diversions and Projected Demand Form (Enhanced Reporting Form) in the Survey Portal. The first Enhanced Reporting Form is due by September 10, 2021, with subsequent Enhanced Reporting Forms due monthly by the 10th day of each succeeding month. If you do not see the Enhanced Reporting Form when you log into the Survey Portal, you are not required to submit this form.³
- 6) If you are seeking an exception to curtailment, complete the applicable online exception form(s) for minimum human health and safety needs (as defined in section 878.1 of the emergency regulation) and/or non-consumptive use (as described in section 878 of the emergency regulation).
- 7) If you have an alternative water sharing agreement (as defined in section 878.2 of the emergency regulation), another basis for exception to curtailment (as defined in section 876.1 of the emergency regulation), or are required to submit additional supporting information for minimum human health and safety needs and/or a non-consumptive use as specified by the applicable exception form or by the Deputy Director for the Division of Water Rights (Deputy Director), submit this information to Bay-Delta@waterboards.ca.gov. Additional information regarding these submittals is provided below.
- 8) Regularly monitor the email address you used to subscribe to the Delta Drought email distribution list (lyris@swrcb18.waterboards.ca.gov) and/or the posted [Curtailment Status List](#) to see when curtailments are lifted or reimposed for your water right or claim.

4. Exceptions and Alternatives to Curtailment

Do I qualify for an exception to curtailment?

Under the emergency regulation, an exception to curtailment may be authorized if:

³ These enhanced reporting requirements may be expanded in the future to include additional diverters or other necessary diversion and use information. For more details about these requirements, please refer to the Reference Guide on Emergency Regulation Reporting Requirements and Submission of Supporting Information in the Sacramento-San Joaquin Delta (Delta) Watershed, which is available on the [Delta Drought and Curtailment Information](#) webpage.

- 1) Water diverted under the water right or claim is the diverter's only source of water and it is needed to meet minimum human health and safety needs (as defined in section 878.1 of the [emergency regulation](#));
- 2) The water right or claim is used only for a non-consumptive use (i.e., all water is returned to the source stream; see section 878 of the emergency regulation); or
- 3) In the event that a proposal is submitted and approved indicating curtailment is not appropriate for a particular diverter or in a specific stream system as demonstrated by verifiable circumstances, such as a system that has been adjudicated and is disconnected from the lower watershed, and curtailment would not make water available to serve senior downstream water rights or claims (see section 876.1, subdivision (e) of the emergency regulation).

Water users may also propose alternative water sharing agreements that would achieve the purposes of the curtailment process (see section 878.2 of the emergency regulation).

What are minimum human health and safety needs?

Minimum human health and safety needs for which an exception to curtailment may allow continued diversion of water are defined in section 877.1 of the emergency regulation, and may be met by continued diversion of only 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 indoor domestic water uses (including water for human consumption, cooking, or sanitation purposes), water supplies necessary for energy sources critical to basic grid reliability, water supplies necessary to prevent tree die-off that would contribute to residential fire risk, water supplies necessary to address critical air quality impacts to protect public health, water supplies necessary to address immediate public health or safety threats, or other water uses necessary for human health and safety which a local, state, 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.

The emergency regulation provides an exception to curtailments issued in the Delta watershed to meet minimum human health and safety needs. Diversers who meet the minimum health and safety criteria but have no available sources of water from which to meet those needs may continue to divert up to 55 gallons per person per day under a curtailed right, after completing a Human Health and Safety Exception Form, without further approval from the Deputy Director. If a diversion for minimum human health and safety needs requires more than 55 gallons per person per day, approval from the Deputy Director is required before the diverter may divert above this threshold.

What is a non-consumptive diversion?

A diversion and use of water that does not decrease downstream flows is considered non-consumptive. Non-consumptive uses of water include: direct diversions for hydropower if discharges are returned to the source stream or its tributaries and water is not held in storage; direct diversions dedicated to instream uses for the benefit of fish and wildlife; other direct diversions solely for non-consumptive uses; and direct diversions located within the Legal Delta used exclusively to irrigate lands entirely below sea level when comparison of diversion and drainage records show that continued irrigation of those lands does not increase net channel depletions. Diversions for non-consumptive uses may continue after completing the non-consumptive exception form; however, your diversion may be subject to subsequent disapproval in accordance with section 878 of the [emergency regulation](#).

How do I submit a request for exception to curtailment?

If you wish to seek an exception to curtailment to meet minimum human health and safety needs or for non-consumptive uses now or in the future, you must submit your request by September 10, 2021, regardless of the current curtailment status of this right. These exception requests must be submitted using the forms available on the Board's [Survey Portal](#). In the case of exceptions for minimum human health and safety needs in excess of 55 gallons per person per day or where this amount cannot be quantified, a petition must also be submitted to Bay-Delta@waterboards.ca.gov. Additional instructions regarding the requirements for the petition are provided within the Human Health and Safety Certification Form.

If you wish to seek an exception to curtailment because you do not believe curtailment is appropriate for a particular diverter or stream system due to verifiable circumstances, such as a system that has been adjudicated and is disconnected from the lower watershed and curtailment would not make water available to serve senior downstream water rights or claims, you must submit a petition, along with supporting information, to Bay-Delta@waterboards.ca.gov with the following subject line: Petition for Curtailment Exception Due to [Reason] for [Insert Water Right ID or Stream System, as applicable].

5. Due Process Considerations

What due process is available to someone who received a curtailment order and believes the order was issued in error?

If you believe you received a curtailment order in error, you may submit a petition for reconsideration to the State Water Board. The Board must receive your petition within 30 days of the date of the curtailment order. The Board's reconsideration will follow the procedure described in Water Code sections 1122 to 1124 and California Code of Regulations, title 23, section 768 et. seq.

A petition for reconsideration does not act as a stay, or hold, of the curtailment order. While a challenge is pending, the curtailment order will remain in effect and penalties for any violation of the emergency regulation accrue unless the Board or a court acts to stay the curtailment order.

How do I decide if I should submit a petition for reconsideration?

A petition for reconsideration is a formal legal challenge to the curtailment order or to the Board's process. A petition for reconsideration has specific legal requirements — it must be filed within 30 days of the curtailment order and be based on any of the following grounds:

1. Irregularity in the proceedings, or any ruling, or abuse of discretion by which the person was prevented from having a fair hearing;
2. The decision or order is not supported by substantial evidence;
3. There is relevant evidence which, in the exercise of reasonable diligence, could not have been produced; or
4. Error in law.

(See Cal. Code Regs., tit. 23, § 768.)

6. Enforcement Process

What is the penalty for failure to comply with the curtailment order?

The maximum penalty for those who illegally divert when there is insufficient water available under their priority of right is fines of \$1,000 per day of violation and \$2,500 per acre-foot of unlawfully diverted water. (Wat. Code, § 1052, subd. (c).)

What is the enforcement process for the curtailment order?

Generally, enforcement involves the following steps:

1. Enforcement staff select a site for investigation, possibly based on complaints received, evidence of a violation, or violations of other water right requirements (such as failure to comply with annual water use reporting requirements). Staff may also select sites for general compliance inspections.
2. Staff investigate, either through a site visit or a desktop analysis. Staff will contact the diverter to schedule any site visit.
3. Staff may informally notify the diverter of any perceived violation of the curtailment order and provide an opportunity for correction by the diverter. This step is not required by law but is often the fastest way to resolve any compliance issue.

4. Staff may issue a draft Administrative Civil Liability (ACL) Complaint and/or draft Cease and Desist Order (CDO) to the diverter if staff believe the curtailment order has been violated.
5. The diverter has 20 days to contest the issuance of a draft ACL and/or CDO. The process for contesting the enforcement action consists of requesting a hearing before the Administrative Hearings Office (AHO) of the State Water Board. Directions for requesting this hearing will be included in any draft ACL and/or CDO. For more information, visit the [AHO](#) webpage.
6. Following a hearing, the AHO would issue a draft order for public review and comment, then send the proposed order for approval by the State Water Board.
7. Following the Board's adoption, you may accept the decision or file an appeal in court within 30 days.

Will State Water Board staff be conducting field inspections?

Yes, field inspections may be useful to augment information available in the Water Board's files or from other sources such as county records, surveys, photos, satellite images, etc. Locations for field inspections will be selected based on complaints received, apparent evidence of unlawful diversion at the site, the magnitude of the potentially unlawful diversion, and the availability of staff resources, among other factors.

7. Additional Information

I sold my property and am no longer responsible for the water right for which I received an order, or I have a water right but have not received information from the Board related to water unavailability and curtailments. What should I do?

If you received an order or notice regarding a water right on a property you no longer own, or if you own a water right but are not receiving orders or notices, you may need to file a Change of Ownership or Contact Information with the Division of Water Rights. To file a Change of Ownership or Contact Information, visit the Board's [Water Rights Ownership and Contact Information Updates](#) webpage and follow the provided instructions. Please submit the required Certification of Curtailment form, noting the change in ownership as well.

How do I report a violation of a curtailment order?

If you have information that a violation may be occurring, you can submit a complaint through the [CalEPA Environmental Complaint System](#), which provides five categories for complaints: Air, Water, Toxic Substances, Pesticides, and Solid Waste. Please select "Water" then select "Complaint Details." You will be asked to describe the alleged unauthorized diversion and provide the location, information about the responsible party, the nature of the "water concern" (please select "water rights"), and

the date of occurrence. You will be given the option to remain anonymous. If you choose to report anonymously, it is important that you provide as much detail and complete information as possible in your initial complaint, as follow-up with you to gather additional information will not be possible.

The State Water Board relies on the public to help identify unauthorized diversions, including diversions by junior water right holders that impact senior water right holders, diversions in violation of permit and license conditions, diversions that constitute the waste or unreasonable use of water, and diversions that cause adverse impacts to public trust resources, such as fish and wildlife.

Visit the [Water Rights Complaints Program](#) webpage for more information.

What should diverters expect in the near future?

In the next few months, diverters can expect:

- The State Water Board will closely monitor conditions and lift or impose water right curtailments as appropriate. The Board will be communicating curtailment statuses via the [Delta Drought email distribution list](#) (under Water Rights) and by updating the Curtailment Status List on the [Delta Drought](#) webpage on at least a weekly basis, so that water right holders and claimants can be immediately notified when the Board suspends, lifts, imposes or reimposes curtailments.
- The State Water Board will continuously process incoming requests and questions. Keep in mind that a large number of diverters are affected by the curtailment and reporting orders. We thank you for your patience as we respond to requests as promptly as possible.
- The State Water Board will hold public workshops if there are significant changes to the methodology the Board uses to inform curtailment decisions.
- The State Water Board will be engaging stakeholders to identify and explore other possible approaches to address severe water shortages and related concerns. Notice of workshops will be provided via the Board's Delta Drought email list.

This Reference Guide was last updated on August 27, 2021.