



State Water Resources Control Board

NOTICE OF PROPOSED EMERGENCY RULEMAKING

Establishment of Minimum Instream Flow Requirements, Curtailment Authority, and Information Order Authority in the Scott River and Shasta River Watersheds (Emergency Regulation)

Proposed Addition of Article 23.5, Sections 875, 875.1, 875.2, 875.3, 875.5, 875.6, 875.7, 875.8, and 875.9 within Title 23, Division 3, Chapter 2 of the California Code of Regulations

January 12, 2024

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. 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. This document provides the required notice.

Proposed Emergency Action

California and the Scott River and Shasta River watersheds are facing an uncertain hydrologic future that is driven by climate change and extreme hydrologic conditions. Water years (WYs) 2019-2020, 2020-2021, and 2021-2022 were some of the driest three-year periods on record in California. During these years, the water supply in many parts of California was insufficient to meet a significant portion of water demands and ecological needs. During WY 2022-2023, California received above average precipitation throughout most of the state. Northern California, and specifically the Scott River and Shasta River watershed, did not experience the same level of precipitation events and is still experiencing drought related impacts. On March 24, 2023, Governor Newsom signed an executive order rolling back emergency drought provisions in select watersheds. The Klamath River watershed was not included in this order and is still subject to the drought proclamation and emergency drought provisions. Two priority tributaries to the Klamath River, the Scott River and the Shasta River, continue to experience lingering drought impacts while recovering from multiple years of drought conditions.

E. JOAQUIN ESQUIVEL, CHAIR | ERIC OPPENHEIMER, EXECUTIVE DIRECTOR

Water Code section 1058.5 grants the State Water Resources Control Board (State Water Board or Board) the authority to adopt emergency regulations to prevent the unreasonable use of water, to require curtailment of diversions when water is not available under the diverter's priority of right, and to require related monitoring and reporting. The State Water Board previously adopted an emergency regulation for the Klamath Watershed, with specific provisions regarding the Scott River and Shasta River watersheds, on August 17, 2021 and readopted a revised emergency regulation on June 21, 2022, which expired on August 1, 2023.

On May 23, 2023, the Karuk Tribe of California, Environmental Law Foundation, Pacific Coast Federation of Fishermen's Associations, and Institute for Fisheries Resources submitted to the State Water Board a Petition for Rulemaking to Set Minimum Flows on the Scott River in Siskiyou County (Petition). On August 15, 2023, the Board held a hearing in response to the Petition. The hearing was expanded to include the Shasta River watershed. At the hearing, the State Water Board directed Division of Water Rights staff to move forward with a proposed emergency regulation for the Scott River and Shasta River watersheds.

This emergency regulation would provide the State Water Board with the necessary tools to:

1. Establish emergency drought minimum flow requirements to protect the threatened Southern Oregon/Northern California Coast (SONCC) coho salmon, the culturally and commercially significant fall-run Chinook salmon, and the culturally significant steelhead;
2. Ensure that adequate water is available to meet baseline minimum instream flow requirements for the protection of SONCC coho salmon, fall-run Chinook salmon and steelhead;
3. Implement the water rights priority system (including in systems with closely interconnected surface and groundwater), as necessary to protect such instream flows;
4. Provide a path for local cooperative solutions to allow for improved agricultural planning while supporting flow and fishery needs, with the additional benefits of incentivizing investment in long-term efficiency to provide resilience in future water shortages, and improving groundwater information to inform immediate and longer-term management actions;
5. Ensure continued access to water supplies for minimum human health and safety needs;
6. Ensure continued access to minimum water supplies for livestock;
7. Generally prohibit inefficient conveyance of water for livestock watering needs outside the primary irrigation season, with exceptions to limit the prohibition when reasonable under specified conditions, in light of fishery needs and the potential for winter groundwater storage;
8. Provide allowances for non-consumptive uses;
9. Require curtailment order reporting; and
10. Authorize information gathering related to implementing the regulation for the above purposes.

Proposed Text of Emergency Regulation

On November 7, 2023, the State Water Board released a preliminary draft emergency regulation text for public review and comment and held a public meeting on the preliminary draft on November 14, 2023. A draft proposed regulation was released on December 8, 2023 as part of the State Water Board meeting agenda for the December 19, 2023, meeting, which included further revisions based on the comments and feedback received on the earlier preliminary draft.

Additional changes were proposed in Change Sheet #1 on December 19, 2023, and further changes were proposed during the public State Water Board meeting. The Board adopted the proposed emergency regulation, as amended, on December 19, 2023. The proposed emergency regulation is appended below and incorporated as part of this notice.

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

The State Water Board finds that an emergency continues to exist due to three record-dry years, preceding years of severe drought conditions, and as declared in the Governor's drought emergency proclamations. Conditions require immediate action to adopt and maintain baseline minimum fisheries flows in the Scott River and Shasta River watersheds and to effectively and efficiently administer the State's water rights system to meet those flows. The emergency regulation is necessary to provide the State Water Board with authority to curtail water diversions when needed to maintain the minimum flows. The California Department of Fish and Wildlife emergency flow recommendations provide baseline minimum flows for migration, rearing, and spawning of fall-run Chinook salmon, SONCC coho salmon, and steelhead in the two watersheds. The emergency regulation is also needed to allow exceptions to priority-based curtailments for minimum human health and safety needs and minimum livestock watering needs.

The State Water Board is unable to address the situation through non-emergency regulations. The current emergency has created the urgent need for a regulation, and a non-emergency regulation would not address this need in a timely manner. Additionally, non-regulatory efforts preceding and during the most recent drought years have proven insufficient on their own to provide a sufficient and reliable level of protection to salmonids.

More detailed information regarding the State Water Board's finding of emergency and the status of the fall-run Chinook salmon, SONCC coho salmon, and steelhead can be found in the Finding of Emergency and Informative Digest, available at the website at the end of this notice.

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

Water Code section 1058 and 1058.5 provide authority for the emergency regulation. The proposed regulation implements, interprets, or makes specific Article X, sections 2 and 4 of the California Constitution, and sections 100, 100.5, 101, 102, 103, 104, 105, 106.3, 109, 174, 186, 187, 275, 348, 1011, 1011.5, 1051, 1051.1, 1052, 1055, 1058,

1058.5, 1825, 1831, 1841, and 5106 of the Water Code. 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.

The proposed regulation also interprets and implements the State Water Board's authority to prevent the unreasonable use of water, and the water rights priority system as described in *Hudson v. Dailey* (1909) 156 Cal. 617; *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* (Siskiyou, Case No. 7035, December 29, 1932) [Shasta River Adjudication]; *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* (Siskiyou, Case No. 13775, April 3, 1950) [Shackleford Adjudication]; *Mason v. Bemrod* (Siskiyou, Case No. 13378, July 1, 1959) [French Creek Adjudication]; *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*, (Siskiyou, Case No. 30662, January 39, 2980) [Scott River Adjudication]; *Environmental Defense Fund v. East Bay Muni. Util. Dist.* (1980) 26 Cal.3d 183; *National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419; *City of Barstow v. Mojave Water Agency* (2000) 23 Cal.4th 1224; *Light v. State Water Resources Control Board* (2014) 226 Cal.App.4th 1463, and *Stanford Vina Ranch Irrigation Co. v. State of California* (2020) 50 Cal.App.5th 976.

Additional detail regarding the authority and references associated with the proposed regulation can be found under each section of the proposed emergency regulation text.

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

The Scott River and Shasta River watersheds are crucial sources of water in Siskiyou County, and both have immense economic, ecologic, and cultural significance. The watersheds provide water for agriculture, domestic and municipal uses, the environment, fire protection, Tribal Nations, and recreation. These watersheds are home to fish that are listed as threatened under the state and federal Endangered Species Acts (ESAs), as well as fish that hold significant cultural importance to California tribes and that are vital to the commercial and recreational fishing economies. Maintaining baseline minimum instream flows for fish requires immediate action. Ensuring water is available to meet minimum human health and safety needs and minimum livestock needs, notwithstanding the water supply conditions, is also of the utmost importance.

Under existing law, a water right holder is prohibited from diverting from a watercourse unless flows are sufficient to satisfy all more senior water right holders first. Water right holders are not entitled to divert water dedicated for instream use under Water Code section 1707 or redivert releases of another right holder's previously stored water, such as flows released from an upstream reservoir, unless the diversion is appropriate and such water has been abandoned. Additionally, no water right extends to use water in a

manner that is unreasonable under the circumstances of the diversion, under California Constitution, Article X, section 2. Reasonable use determinations must consider the multiple uses of water in a system, including instream uses for fishery purposes. The State Water Board's implementation of the water right priority system and reasonable use requirements through its existing enforcement authorities (which would require individual notices and evidentiary hearings) are insufficient because of the resources and time required during an emergency response.

Normally, during times of shortage, senior water right holders are entitled to water prior to a more junior water right holder. The State Water Board may curtail junior appropriators in reverse order of priority when water is not available at their priority of right. 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. The water right priority system does not make exceptions allowing for minimal diversions for basic human and livestock needs to continue notwithstanding curtailment. The proposed regulation promotes the human right to water by establishing procedures for exceptions to curtailment based on minimum human health and safety needs and for de minimis and critical water use for drinking by livestock.

It is imperative that water right holders and claimants, who do not have water available at their priority of right and who do not provide water for minimum human health and safety needs or minimum livestock watering needs, cease diversions of water that are needed for baseline minimum flows to protect fish, 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 Scott River and Shasta River watersheds – two high priority tributaries to the Klamath River that provide critically important habitat for the commercially significant and culturally important fall-run Chinook salmon and the SONCC coho salmon. The SONCC coho salmon is listed as a threatened species under both the federal and state ESAs and is identified as being at high and moderate risk of extinction in the Scott River and Shasta River, respectively. An emergency regulation will enable the State Water Board to protect critical water supply needed for the protection of important fish species, minimum human health and safety needs, and minimum livestock watering and timely enforce the water right priority system in these watersheds.

There is no comparable federal statute or regulation. The proposed emergency regulation is not inconsistent or incompatible with existing State regulations

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))

Water Code section 1058.5 grants the State Water Board the authority to adopt emergency regulations to prevent the unreasonable use of water, to require curtailment of diversions when water is not available under the diverter's priority of right, and to require related monitoring and reporting.

The proposed emergency regulation would be adopted to prevent unreasonable use of water, unreasonable method of use of water, and unreasonable method of diversion of water, including curtailment of diversions when water is not available under the diverter's priority of right, and, in furtherance of the foregoing to require reporting of diversions or use or the preparation of monitoring reports. The proposed emergency regulation would be adopted in response to conditions that exist, or are threatened, 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 it 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 fiscal effects incurred by state and local governments as a result of the proposed emergency regulation include the following: (1) revenue losses for municipal water supply agencies; (2) revenue losses for non-municipal water supply agencies (water for agriculture); (3) state and county tax revenue losses; (4) reporting costs to complete and submit compliance certifications and ongoing diversion reporting in response to a curtailment order; and (5) reporting costs to complete and submit the information required by an information order, including supporting documentation. Fiscal effects were estimated for three different flow forecast scenarios for 2024: the expected-range scenario, extreme-drought scenario, and above-average scenario.

From three different scenarios, the expected-range scenario reflects the most-likely cost estimation compared to any previous fiscal costs; whereas the extreme-drought scenario suggests the most-conservative fiscal costs estimate for the proposed emergency regulation. The State Water Board estimates a total cost to all state and local agencies due to the proposed emergency regulation as \$1,377,940 for the expected-range scenario, \$2,042,755 for the extreme-drought scenario, and \$322,628 for the above-average scenario. The total revenue loss for municipal water supply agencies is estimated to be \$666,202 for the expected-range scenario, \$846,218 for the extreme-drought scenario, and \$249,471 for the above-average scenario. The total

revenue loss for non-municipal water supply agencies is estimated to be \$ 263,445 for the expected-range scenario, \$485,550 for the extreme-drought scenario, and \$6,630 for the above-average scenario. The total county and state agricultural tax revenue losses are estimated to be \$391,713 for the expected-range scenario, \$654,407 for the extreme-drought scenario, and \$9,947 for the above-average scenario. The total reporting costs for all state and local agencies are estimated to be \$56,580, the same amount for each of the three scenarios.

Due to the limited timeframe the emergency regulation will be in effect, there will be no fiscal impacts to any state, local, or federal agency beyond the expiration of the emergency regulation, one year after it takes effect.

More detailed information regarding the cost or savings of the proposed emergency regulation can be found in the Fiscal Impact Statement at the end of the Informative Digest.

The Proposed Emergency Regulation is attached to this notice and the Finding of Emergency and Informative Digest is available on the State Water Board's [Scott River and Shasta River Watersheds Drought Response webpage](https://www.waterboards.ca.gov/drought/scott_shasta_rivers/) (https://www.waterboards.ca.gov/drought/scott_shasta_rivers/).

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, adopt Article 23.5, Sections 875, 875.1, 875.2, 875.3, 875.5, 875.6, 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), 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.

(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, or 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.

(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/. 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 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.

(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 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 the anticipated contribution to protections provided by the flows in subdivision (c)(1) or (c)(2). 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 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.

(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.
- (iii) The proposal includes a description of metering in place for groundwater well extractions, and a proposal to meter and record such extractions daily and report monthly to the Deputy Director or the coordinating entity, 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.

(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)(ii)(2) or (f)(4)(D)(iii)(3).

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 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, 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 as defined in section 877.1, subdivision (h), 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. 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 appropriate 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 or Article 24, section 878.1, subdivision (b)(1).
- (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.
 - (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, 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 redds 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;
- (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.