

**STATE WATER RESOURCES CONTROL BOARD
BOARD MEETING SESSION – DIVISION OF WATER RIGHTS
JUNE 21, 2022**

ITEM 5

SUBJECT

CONSIDERATION OF A PROPOSED RESOLUTION TO AMEND AND READOPT AN EMERGENCY REGULATION THAT PROVIDES CURTAILMENT AUTHORITY IN THE KLAMATH RIVER WATERSHED, AND ESTABLISHES MINIMUM INSTREAM FLOW REQUIREMENTS AND INFORMATION ORDER AUTHORITY IN THE SCOTT RIVER AND SHASTA RIVER WATERSHEDS

DISCUSSION

On May 10, 2021, Governor Gavin Newsom issued a [Proclamation of a State of Emergency](#) declaring a drought State of Emergency in Siskiyou County and other counties throughout California, citing the critical low flows in locations such as the Klamath Basin. The proclamation directs the State Water Resources Control Board (State Water Board) and California Department of Fish and Wildlife (CDFW) to evaluate minimum instream flows and other actions to protect salmon, steelhead, and other native fishes in critical systems in the state and work with water users and other parties on voluntary measures to implement those actions. To the extent voluntary actions are not sufficient, the State Water Board, in coordination with CDFW, is to consider emergency regulations to establish minimum drought instream flows. The directive also suspends Public Resources Code, Division 13 (commencing with section 21000) and regulations adopted pursuant to that Division to the extent necessary to address the impacts of drought in the declared counties and watersheds.

Where the Governor has declared a state of emergency due to drought conditions, Water Code section 1058.5 grants the State Water Board the authority to adopt emergency regulations to prevent unreasonable use of water, require curtailment of diversions when water is not available under a diverter's priority of right, and require reporting of diversion or use or the preparation of monitoring reports.

On August 17, 2021, the State Water Board adopted a drought emergency regulation that went into effect on August 30, 2021, when it was approved by the Office of Administrative Law and filed with the Secretary of State (Cal. Code Regs., tit. 23, §§ 875–875.9). The existing drought emergency regulation provides the State Water Board with curtailment authority to protect minimum instream flows, establishes minimum human health and safety and livestock watering exceptions, and limits inefficient diversions for livestock during the September through January timeframe. The emergency regulation declares certain diversion practices unreasonable, and declares that diversions are unreasonable when the drought emergency minimum

instream flows are not met. On September 9 and 10, 2021, the State Water Board issued curtailment orders in the Scott River and Shasta River watersheds to protect minimum instream flows. Since that time, curtailment of water rights has been managed adaptively to maintain minimum instream flows while maximizing water right diversions.

On March 28, 2022, Governor Newsom signed an **Executive Order** acknowledging the continued drought conditions throughout the state, extending the authorities and directives of the 2021 proclamations, and calling for increased conservation efforts. On April 20, 2022, in response to continued emergency drought conditions persisting throughout the Shasta River and Scott River watersheds (tributaries to the Klamath River) and insufficient water supply to meet the needs of all water uses, **CDFW requested** that the State Water Board consider readoption of the drought emergency regulation to protect coho and Chinook salmon and steelhead, and provided updated drought minimum instream flow recommendations for the two watersheds.

The current drought emergency regulation is set to expire in August 2022. Due to continued drought conditions, the State Water Board is considering readoption of the drought emergency regulation. Staff propose changes to the existing drought emergency regulations that clarify requirements, update the minimum flow requirements based on recommendations from CDFW, extend the inefficient livestock watering prohibition through March, and address stakeholder feedback received since the regulation's adoption, including the addition of a local cooperative solution for livestock diversions during the prohibition period. Additional revisions include administrative improvements and updated definitions and exceptions.

POLICY ISSUE

Should the State Water Board adopt the proposed resolution?

FISCAL IMPACT

This activity is budgeted within existing resources and no additional fiscal demands on the State Water Board will occur as a result of approving this item.

REGIONAL BOARD IMPACT

None.

STAFF RECOMMENDATION

Approve the resolution to amend and readopt the drought emergency regulation.