

**STATE WATER RESOURCES CONTROL BOARD  
RESOLUTION NO. 2022-0030**

**REVISING AND RE-ADOPTING AN EMERGENCY REGULATION FOR  
CURTAILMENT OF DIVERSIONS ON MILL AND DEER CREEKS DUE TO  
INSUFFICIENT FLOW FOR SPECIFIC FISHERIES**

WHEREAS:

1. California and the entire western United States are facing a significant drought in the wake of one of the driest periods on record, driven by climate change and unprecedented hydrologic conditions. Water supply in many parts of California, including the Delta watershed, is insufficient to meet demands and requires urgent action to ensure the protection of health, safety, and the environment;
2. On April 21, 2021, Governor Gavin Newsom issued a [Proclamation of a State of Emergency for Mendocino and Sonoma counties](#), in response to drought conditions in the Russian River watershed. On May 10, 2021, Governor Newsom issued an expanded Proclamation of a State of Emergency for 41 counties, including those within the Sacramento-San Joaquin Delta watershed, which included Mill Creek and Deer Creek, due to drought conditions ([May 2021 Proclamation](#)). The May 2021 Proclamation finds the extreme drought conditions through much of the State presents urgent challenges, including the risk of water shortages in communities, greatly increased wildfire activity, diminished water for agriculture production, degraded habitat for many fish and wildlife species, threat of saltwater contamination of large fresh water supplies conveyed through the Sacramento-San Joaquin Delta, and additional water scarcity if drought conditions continue into 2022. On July 8, 2021, the Governor [expanded the emergency declaration](#) to nine additional counties and called upon Californians to voluntarily reduce their water use by 15 percent;
3. To ensure critical instream flows for species protection in the Sacramento-San Joaquin Delta Watersheds, the May 2021 Proclamation directs the State Water Resources Control Board (State Water Board) and California Department of Fish and Wildlife (CDFW) to evaluate the minimum instream flows and other actions needed to protect salmon, steelhead, and other native fishes in critical stream systems in the State and to work with water users and other parties on voluntary measures to implement those actions if possible. If voluntary measures do not occur, the proclamation directs the State Water Board to consider the development of emergency regulations to establish minimum drought instream flows. The May 2021 Proclamation also suspends the environmental review required by the California Environmental Quality Act to allow drought emergency regulations and other actions to take place as quickly as possible;

4. Due to the conditions described in the April and May 2021 proclamations, persisting, additional executive orders have been issued that extend and expand the authorities and directives contained in the April and May 2021 proclamations;<sup>1</sup>
5. Due to persistent drought conditions, there is not enough water for all users or uses in most streams, and diversions under junior water rights will need to be curtailed to preserve flows for senior water right holders. In addition, some streams that provide habitat and migration corridors for federally or state listed endangered species will not maintain the minimum flows for these species to survive unless water diverters substantially reduce or curtail water use. There is a continued urgent need to address severe water shortages in the Mill Creek and Deer Creek watersheds to protect minimum flows for critical fish species, as well as to meet human health and safety needs;
6. Central Valley spring-run Chinook salmon (*Oncorhynchus tshawytscha*) (CV SR Salmon) are listed as threatened under the state and federal Endangered Species Acts (Fish & G. Code, § 2050 et seq.; 16 U.S.C. § 1531 et seq.) and California Central Valley steelhead (*Oncorhynchus mykiss*) (CCV Steelhead) are listed as threatened under the federal Endangered Species Act. Because of the fragile nature of the fisheries in these watersheds, continued regulatory action to protect this public trust resource is warranted;
7. The National Marine Fisheries Service (NMFS), in consultation with CDFW and the United States Fish and Wildlife Service, has identified Deer Creek and Mill Creek, tributaries to the Sacramento River, along with Butte Creek, as priority watersheds for sustaining CV SR Salmon and CCV Steelhead. These streams contain migration, spawning, and rearing habitat for some of the last remaining naturally produced populations of threatened CV SR Salmon and CCV Steelhead;
8. Due to significant concerns over protection of CV SR Salmon and CCV Steelhead from reduced flows during the drought years of 2014, 2015, and 2021, NMFS and CDFW recommended that the State Water Board adopt emergency regulations requiring curtailment of diversions, with a small number of identified exceptions such as for minimum health and safety needs, to preserve minimum drought flows, under California Code of Regulations, title 23, division 3, chapter 2, article 24, where those minimum flows were needed to protect fish and would not be available without emergency regulatory action by the Board.

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<sup>1</sup> Governor Newsom's July 8, 2021 proclamation expanded the emergency declaration to nine additional counties and called upon Californians to voluntarily reduce their water use by 15 percent. Governor Newsom issued another proclamation on October 19, 2021, further increasing the number of counties included in the drought state of emergency.

9. On [September 22, 2021](#), the State Water Board adopted the emergency regulation for curtailment of diversions on Mill and Deer creeks due to insufficient flow for specific fisheries (emergency regulation). The [emergency regulation](#) was approved by the Office of Administrative Law (OAL) and became effective on October 4, 2021. The emergency regulation is effective for up to one year unless readopted;
10. The State Water Board issued orders imposing water right curtailment and reporting requirements to all water right holders and claimants in [Mill Creek](#) and [Deer Creek](#) on October 11, 2021;
11. Fish passage data collected by CDFW in 2022 suggest that the drought emergency minimum instream flow requirements provided for successful fish passage on both Mill Creek and Deer Creek;
12. In April and June 2022, [CDFW](#) and [NMFS](#) recommended that the State Water Board re-adopt emergency flow protections for Mill Creek and Deer Creek consistent with the prior emergency regulations. The Mill Creek and Deer Creek flows establish bare minimum flow levels needed for passage of migrating fish to and from spawning and rearing grounds in the watersheds above major diversions in the lower watersheds and do not represent flows that may be needed in the longer term to support these fish species and their habitat. CDFW and NMFS are currently developing such recommendations for consideration by the State Water Board in longer term planning processes;
13. The importance of Mill Creek and Deer Creek to the survival and recovery of salmon and steelhead in the Northern California's Central Valley is significant. Of the 19 independent CV SR Salmon populations that historically occurred, the populations in Mill Creek and Deer Creek are among the last of a small group of naturally produced populations. Mill Creek and Deer Creek are identified in NMFS's Final Central Valley Salmon and Steelhead Recovery Plan as Core 1 populations for CV SR Salmon and CCV Steelhead. Preserving and restoring Core 1 populations is the foundation of the recovery strategy because Core 1 populations are considered to have the greatest potential to support independent viable populations;
14. These two streams are unique in the Central Valley because they support naturally produced populations of CV SR Salmon and CCV Steelhead, yet have no upstream water storage facilities that can be managed to buffer the effects of drought on streamflow and water temperature requirements for these fish species. Instead, all of the water management facilities and water use occur on downstream reaches near the confluence with the Sacramento River, and their careful management is needed this year to ensure CV SR Salmon and CCV Steelhead are able to successfully migrate upstream to spawning habitat and downstream to the Sacramento River;

15. The State Water Board has a duty to protect, where feasible, the state's public trust resources, including fisheries, to the extent reasonable. (*National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419.);
16. The State Water Board also has the authority under article X, section 2 of the California Constitution and Water Code, section 100 to prevent the waste or unreasonable use, unreasonable method of use, or the unreasonable method of diversion of all waters of the State. Water Code, section 275 directs the State Water Board to “take all appropriate proceedings or actions before executive, legislative, or judicial agencies...” to enforce the constitutional and statutory prohibitions identified in article X, section 2, commonly referred to as the reasonable use doctrine. The reasonable use doctrine applies to the diversion and use of both surface water and groundwater, and it applies irrespective of the type of water right held by the diverter or user. (*Peabody v. Vallejo* (1935) 2 Cal.2d 351.) What constitutes reasonable water use is dependent upon the entire circumstances presented and varies as the current situation changes. (*Environmental Defense Fund, Inc. v. East Bay Mun. Utility Dist.* (1980) 26 Cal.3d 183, 194.);
17. The State Water Board has determined, based on the best available information, that continued minimum flows are necessary in the identified watersheds, below which levels serious harm and endangerment to the species may occur. The drought emergency minimum flow requirements due to insufficient flow for specific fisheries in the proposed readopted emergency regulation are consistent with recommendations from NMFS and CDFW and consistent with those adopted in response to similar drought emergency conditions in 2021, and largely consistent with emergency regulations adopted in 2014 and 2015. The State Water Board recognizes that these drought emergency minimum flows do not represent optimal passage and ecosystem protection conditions for CV SR Salmon and CCV Steelhead and that such long-term flows should be developed and implemented as soon as practicable to balance the various needs in the watershed during all year types. The State Water Board encourages the development through voluntary agreements of such long-term measures, where possible;
18. The State Water Board has identified the need for these drought emergency minimum flows during this continued drought period due to the lack of developed alternative water supplies to meet all needs during these emergency conditions. Application of the reasonable use doctrine under these circumstances requires specific consideration of the benefits of diverting water for current uses from the identified water bodies and the potential for harm to the protected species from such diversions under the current drought conditions. Having considered the available information, the State Water Board finds that, during the current drought conditions, diversions that would cause flows in these creeks to drop below minimum passage levels are not reasonable, and that curtailment of such diversions is necessary to implement the requirements of California Constitution, Article X, section 2. This finding is narrowly targeted only to diversions of water

needed under the current extraordinary drought conditions to afford minimum protection to migrating CV SR Salmon and CCV Steelhead, and should not be construed as a finding concerning the reasonableness of these diversions in general;

19. Given the essential nature of water in sustaining human life, and particularly in light of the declaration in Water Code section 106.3 of water supplies for consumption, sanitation and cooking as a human right, the statutory declaration of domestic use as the highest use in Water Code sections 106, and the statutory declaration in Water Code sections 350 et seq. that public water suppliers may declare a water shortage emergency to allow sufficient water for human consumption, sanitation, and fire protection, the State Water Board has determined that, under the circumstances being addressed by the regulation, diversion under even a more senior right for any other use when supplies required for minimum health and safety needs cannot be met is not reasonable under the California Constitution, Article X, §2.;
20. The regulation would provide that diversions from Mill Creek and Deer Creek are not reasonable to the extent those diversions would cause flows to drop below the specified minimums. Under the regulation, such diversions would be curtailed as appropriate to maintain those minimum flows, with the exception of diversions necessary for minimum health and safety needs. Diversions for minimum health and safety needs may not be curtailed, notwithstanding a lower seniority than other, curtailed rights. The diversion or use of water in violation of this regulation would not be a reasonable diversion or use and would constitute a violation of Water Code section 100;
21. Given the need to act quickly and with reasonable assurance that domestic and municipal supplies required for minimum health and safety needs are met, the data indicating that basic human needs require up to 55 gallons per person per day, and the overall small impact that small diversions tend to make on other uses, it has been determined that diversions for domestic and municipal health and safety use of less than 55 gallons per person, per day, may continue after issuance of a curtailment order without further approval from the Deputy Director of Water Rights (Deputy Director), subject to the conditions outlined in the regulation. All other diversions for minimum health and safety needs will be considered by the Deputy Director upon request of the diverter, or appropriate regulatory agency where a single diverter's operations could not alone alleviate the identified emergency;
22. The practice of flood irrigation for domestic lawn irrigation, as has been reported and observed in the Mill Creek and Deer Creek watersheds, is highly inefficient and results in excessive water diversions that do not put water resources to beneficial use to the full extent that they are capable. A range of alternatives to flood irrigation of domestic lawns, including sprinkler irrigation and lawn replacement, are widely available. To address inefficient irrigation practices for lawn watering that are unreasonable during times of water shortage, the

emergency regulation limits domestic lawn watering to 18.5 gallons per day per 100 square feet, based on existing regulatory guidance at California Code of Regulations, title 23, section 697 for the amount of water considered reasonable for water right applications for certain domestic uses. Water conservation actions to reduce inefficient water use practices are especially important in drought years when water supply is low, as the multiple drought proclamations, and drought emergency water conservation regulations adopted by the Board, have recognized. The State Water Board will continue to explore the need to develop requirements for additional water conservation actions to reduce inefficient water uses should the drought emergency continue into 2023;

23. The emergency regulation would provide the Deputy Director authority to approve a petition for limited continued diversions needed for livestock survival during pulse flow events in the event that alternate water supplies are not available;
24. On August 3, 2022, the State Water Board distributed for public review and comment a Notice of Proposed Rulemaking and Emergency Regulation Digest that comply with State laws and regulations;
25. The State Water Board proposes to re-adopt the emergency regulation in accordance with title 2, division 3, chapter 3.5 of the Government Code (commencing with section 11340). The State Water Board has the authority to adopt emergency regulations pursuant to Water Code section 1058.5, as it deems necessary to prevent the unreasonable use or unreasonable method of diversion of water, to promote water recycling or water conservation, and to require curtailment of diversions when water is not available under the diverter's priority of right;
26. Voluntary agreements between diverters, NMFS, and CDFW in Mill Creek were reached in the drought years of 2014 and 2015. State Water Board staff have reached out to water users on Mill Creek and Deer Creek to discuss possible voluntary agreements. So far, agreements have not been reached in either Mill Creek or Deer Creek, but agreements may still be possible. Agreements may be reached that have the potential to provide comparable protection to the fisheries as the flows in proposed section 876.5, and the proposed regulation would allow substitution of these agreements for curtailments if the agreements cover a significant percentage of the water diverted in the watersheds;
27. As discussed above, the State Water Board is re-adopting this emergency regulation because of the emergency drought conditions, the need for prompt action, and the unique attributes of these two tributaries. The vehicle of adopting an emergency regulation to identify a minimum flow requirement for fisheries protection and health and safety needs and limitation for domestic lawn irrigation is an appropriate approach in these limited circumstances; and


28. Pursuant to Water Code section 7, the State Water Board is authorized to delegate authority to the Executive Director and to the Deputy Director. The State Water Board has delegated authority to the Executive Director and to the Deputy Director.

THEREFORE BE IT RESOLVED THAT:

1. The State Water Board readopts sections 876.7 and 878.4 and readopts with amendments section 876.5, in title 23, division 3, chapter 2, article 24 of the California Code of Regulations, as appended to this resolution, as an emergency regulation;
2. State Water Board staff shall submit the regulation to the Office of Administrative Law (OAL) for final approval;
3. This regulation shall remain in effect for one year after filing with the Secretary of State unless: (i) the State Water Board determines that it is no longer necessary due to changed conditions, (ii) the conditions specified in Water Code section 1058.5 subdivision (a)(2) are no longer in effect, in which case this regulation is deemed repealed, or (iii) the State Water Board renews the regulation due to continued drought conditions as described in Water Code section 1058.5;
4. If, during the approval process, State Water Board staff, the State Water Board, or OAL determines that minor corrections to the language of the regulation or supporting documentation are needed for clarity or consistency, the State Water Board Executive Director or designee may make such changes; and
5. State Water Board staff shall coordinate with staff from CDFW, NMFS, and stakeholders in Deer and Mill Creeks to discuss interim and long-term resolution of needed measures to protect fisheries, including instream flow needs, water use efficiency and water conservation measures, habitat improvements, and potential funding sources; and
6. The State Water Board delegates to the Deputy Director the authority to act on requests for approvals pursuant to the regulation.

**CERTIFICATION**

The undersigned Clerk to the Board does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on August 16, 2022.

 for \_\_\_\_\_  
Jeanine Townsend  
Clerk to the Board

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

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In Title 23, Division 3, Chapter 2, Article 24, amend Section 876.5, and re-adopt Sections 876.7, and 878.4, to read:

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

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

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

- (a) For the protection of threatened and endangered fish, no water shall be diverted from the streams listed below during the effective period of a curtailment order under this article, except as provided under sections 878, 878.1 or 878.4.
- (b) The Deputy Director may issue a curtailment order upon a determination that without curtailment of diversions flows are likely to be reduced below the drought emergency minimum flows specified in subdivision (c). Curtailment orders shall be effective the day after issuance. Except as provided in this subdivision and in sections 878, 878.1, and 878.4, where flows are sufficient to support some but not all diversions, curtailment shall be required in order of water right priority.

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

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



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

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

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

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

- (A) October 15 - March 31, if Adult CCV Steelhead are present –  
(i) Base Flows – 50 cubic-feet per second (cfs) or full flow without diversions, whichever is less.

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

Department of Fish and Wildlife or the National Marine Fisheries Service. Pulse flows may be required when juvenile CV SR salmon or CCV steelhead are observed in the lower reaches of Mill Creek. When required, pulse flows are in lieu of, not in addition to, base flow requirements. Pulse flows will last a minimum of 24 hours to a maximum of 48 hours, and will be determined based on the presence of fish observed and desired migration movements downstream into the Sacramento River. Pulse flow duration will be determined by the Deputy Director in consultation with the California Department of Fish and Wildlife or the National Marine Fisheries Service. The flow ramp down period is part of the pulse flow period. Pulse flows may be required if both of the following occur:

- A. The California Department of Fish and Wildlife or the National Marine Fisheries Service conducts field surveys and observes juvenile CV SR salmon or CCV steelhead in the lower reaches of Mill Creek in June; and
  - B. The California Department of Fish and Wildlife or the National Marine Fisheries Service submits a request to provide the pulse flow and it is approved by the Deputy Director.
- (E) The California Department of Fish and Wildlife or the National Marine Fisheries Service may conduct field surveys and notify the Deputy Director when the pertinent migration periods have ended. Upon such notice, the Deputy Director shall, no later than the next business day, suspend relevant portions of curtailment orders that are based on the need for a particular flow volume when presence of adult or juvenile CV SR salmon and CCV steelhead no longer supports the need for the required flows. The Deputy Director may independently determine that hydrologic conditions no longer support the need for the required flows, and suspend relevant portions of curtailment orders.
- (F) The California Department of Fish and Wildlife or the National Marine Fisheries Service may conduct field surveys and notify the Deputy Director that the pertinent migration periods have not yet begun. The Deputy Director may choose not to issue curtailment orders for purposes of meeting the drought emergency minimum flows identified in this subdivision if these agencies have determined that fish are not present and in need of the identified flows.

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

- (A) October 15 - March 31, if Adult CCV Steelhead are present –
  - (i) Base Flows – 50 cfs or full flow without diversions, whichever is less.
  
- (B) October 15 – June 30, if Juvenile CV SR Salmon or Juvenile CCV Steelhead are present and Adult CV SR Salmon or Adult CCV Steelhead are not present –
  - (i) Base Flows – 20 cfs or full flow without diversions, whichever is less.
  
- (C) April 1 up to June 15, if Adult CV SR Salmon are present –
  - (i) Base Flows – 50 cfs or full flow without diversions, whichever is less.
  - (ii) Pulse Flows – 100 cfs or full flow without diversions, whichever is less. A flow ramp down period at the end of a pulse flow may be included if requested by the California Department of Fish and Wildlife or the National Marine Fisheries Service. Pulse flows may be required when adult CV SR salmon are observed between Vina Dam and the Sacramento River. When required, pulse flows are in lieu of, not in addition to, base flow requirements. Pulse flows will last a minimum of 24 hours to a maximum of 72 hours, and will be determined based on the presence of fish observed and desired migration movements upstream. Pulse flow duration will be determined by the Deputy Director in consultation with the California Department of Fish and Wildlife or the National Marine Fisheries Service. The flow ramp down period is part of the pulse flow period. Pulse flows may be required if either of the following conditions occur prior to the end of the migration period:

- A. The average daily flow measured at the United States Geological Survey Deer Creek Near Vina CA gauge (#11383500) is 100 cfs or less for three consecutive days; or
  - B. The California Department of Fish and Wildlife or the National Marine Fisheries Service submits a request to provide the pulse flow and it is approved by the Deputy Director.
- (D) June 1 up to June 15, if Juvenile CV SR Salmon or Juvenile CCV Steelhead are present –
- (i) Pulse Flows – 100 cfs or full inflow without diversions, whichever is less. A flow ramp down period at the end of a pulse flow may be included if requested by California Department of Fish and Wildlife or National Marine Fisheries Service. Pulse flows may be required when juvenile CV SR salmon or CCV steelhead are observed in the lower reaches of Deer Creek. When required, pulse flows are in lieu of, not in addition to, base flow requirements. Pulse flows will last a minimum of 24 hours to a maximum of 48 hours, and will be determined based on the presence of fish observed and desired migration movements downstream into the Sacramento River. Pulse flow duration will be determined by the Deputy Director in consultation with California Department of Fish and Wildlife or the National Marine Fisheries Service. The flow ramp down period is part of the pulse flow period. Pulse flows may be required if both of the following occur:
    - A. The California Department of Fish and Wildlife or the National Marine Fisheries Service conducts field surveys and observes juvenile CV SR salmon or CCV steelhead in the lower reaches of Deer Creek in June; and
    - B. The California Department of Fish and Wildlife or the National Marine Fisheries Service submits a request to provide the pulse flow and it is approved by the Deputy Director.

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

Authority: Sections 1058, 1058.5, Water Code

Reference: Cal. Const., Art. X, § 2; Sections 100, 100.5, 104, 105, 275, 1058.5, Water Code; *El Dorado Irrigation Dist. v. State Water Resources Control Board* (2006) 142 Cal.App.4th 937; *Light v. State Water Resources Control Board* (2014) 226 Cal.App.4th 1463; *Stanford Vina Ranch Irrigation Co. v. State of California* (2020) 50 Cal.App.5th 976.

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

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

Authority: Sections 1058, 1058.5, Water Code

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

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

If the National Marine Fisheries Service and the California Department of Fish and Wildlife enter into an agreement with a diverter or diverters, that the National Marine Fisheries Service or the California Department of Fish and Wildlife determines provides watershed-wide protection for the fishery that is comparable to or greater than that provided by section 876.5, the diverter or diverters may request approval from the Deputy Director to implement the agreement in place of State Board-issued curtailment orders under section 876.5. The Deputy Director shall approve the request so long as other users of water will not be injured.

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

Other local cooperative solutions may also be proposed to the Deputy Director as an alternative means of reducing water use to preserve drought emergency minimum flows. Requests to implement voluntary agreements to coordinate diversions or share water in place of State Water Board-issued curtailment orders under this article may be submitted to the Deputy Director at any time. The Deputy Director may approve a request, or approve it subject to any conditions including reporting requirements that the Deputy Director determines to be appropriate, if the Deputy Director determines:

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

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

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

Authority: Sections 1058, 1058.5 Water Code

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