

**STATE WATER RESOURCES CONTROL BOARD
RESOLUTION NO. 2014-0031**

**TO ADOPT AN EMERGENCY REGULATION FOR STATEWIDE DROUGHT-RELATED
CURTAILMENT OF WATER DIVERSIONS TO PROTECT SENIOR WATER RIGHTS**

WHEREAS:

1. On April 25, 2014, Governor Edmund G. Brown Jr. issued an executive order to strengthen the state's ability to manage water and habitat effectively in drought conditions and called on all Californians to redouble their efforts to conserve water. The executive order finds that the continuous severe drought conditions present urgent challenges across the state including water shortages in communities and for agricultural production, increased wildfire activity, degraded habitat for fish and wildlife, threat of saltwater contamination, and additional water scarcity if drought conditions continue into 2015;
2. The executive order refers to the [Governor's Proclamation No. 1-17-2014](#), issued on January 17, 2014, declaring a drought State of Emergency to exist in California due to severe drought conditions. The January Proclamation notes that the state is experiencing record dry conditions, with 2014 projected to become the driest year on record. Since January, state water officials indicate that reservoirs, rainfall totals and the snowpack remain critically low. This follows two other dry or below average years, leaving reservoir storage at alarmingly low levels. The January Proclamation finds that dry conditions and lack of precipitation present urgent problems to drinking water supplies and cultivation of crops, which put farmer's long-term investments at risk. The conditions also threaten the survival of animals and plants that rely on California's rivers, including many species in danger of extinction. The January Proclamation also calls on all Californians to reduce their water usage by 20 percent;
3. The executive order directs the State Water Resources Control Board (State Water Board) to "adopt and implement emergency regulations pursuant to Water Code section 1058.5, as it deems necessary ... to require curtailment of diversions when water is not available under the diverter's priority of right." This directive explicitly reinforces authority granted to the State Water Board as part of the drought relief legislation signed into law by Governor Brown on March 1, 2014, to adopt emergency regulations "to require curtailment of diversions when water is not available under the diverter's priority of right, or ... to require reporting of diversion or use or the preparation of monitoring reports ... during a period for which the Governor has issued a proclamation of a state of emergency." (Wat. Code, § 1058.5, subd (a).);
4. Water Code section 1058.5 grants the State Water Board the authority to adopt emergency regulations in certain drought years in order to: "prevent the waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion, of water, to promote water recycling or water conservation, to require curtailment of diversions when water is not available under the diverter's priority of right, or in furtherance of any of the foregoing, to require reporting of diversion or use or the preparation of monitoring reports";

5. On the same day as the Governor's Proclamation, January 17, 2014, the State Water Board issued a Notice of Surface Water Shortage and Potential for Curtailment of Water Right Diversions. The notice advised that if dry weather conditions persist, the State Water Board will notify water right holders of the requirement to limit or stop diversions of water under their water rights, based on water right priority;
6. Due to extreme 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. Immediate action is needed to effectively and efficiently administer and enforce the state's water rights system in light of significant reductions in water availability due to the current drought;
7. Pursuant to the State's water right priority system, the State Water Board needs to curtail water diversions when sufficient flows in a watershed are not available for 1) a water user's needs, based on their priority of right, because available flows are instead needed to satisfy senior rights or to provide a correlative share to equally senior rights (i.e. riparian rights); or 2) when water in the stream is from water imports or previously stored water released for downstream delivery or use, including meeting public trust and water quality requirements, to which certain diverters do not have any right;
8. The State's current system for curtailing diversions and enforcing those curtailments will not provide for timely and effective implementation of the State's water right system during the current drought when numerous water diversions require curtailment and enforcement in a short period of time. The emergency regulation improves the State Water Board's abilities to quickly and effectively implement and enforce those curtailments during the current drought to ensure that the State's water right priority system is effectively implemented;
9. The emergency regulation is needed to greatly increase timely compliance with and effective enforcement of the reporting requirements and water diversion curtailments issued by the State Water Board during the drought to ensure that senior water rights are protected. While the State Water Board has existing authority to issue curtailment notices for junior water users, and to initiate enforcement action, it is likely that there will be a high degree of noncompliance during the drought that will impact senior water right holders because water will not be available for their diversions due to unauthorized diversions and failure to report;
10. Due to the severity of the drought, large numbers of junior water rights will have to cease diverting statewide to protect senior water rights. Many of those water right holders that do not have alternative water supplies, or only have costly alternate supplies, are likely to continue diverting after receiving a curtailment notice under the Board's current authorities. This situation is exacerbated because existing penalties, and the lengthy process to impose them, do not provide an adequate deterrent to noncompliance when weighed against the potential benefits of continued noncompliance. In addition, if a large percent of water right holders simply fail to respond to curtailment notices issued by the Board under its current authorities because of the lack of prompt and meaningful repercussions under the State Water Board's existing authorities, identification of unauthorized diversions is difficult and slow. The State Water Board currently requests that recipients of a curtailment notice submit information regarding, among other things, their curtailment or reason for continued diversion. However, if many water right holders fail to respond to the request for reporting information under the curtailment notices

issued under the current authorities, it will be exceedingly difficult for the State Water Board to focus curtailment investigations and refine future curtailment analyses to reflect actual hydrologic conditions and actual legal water use;

11. The emergency regulation solves both the curtailment and reporting compliance issues identified above by: 1) providing greater assurance that curtailed water rights holders will cease diverting water; and 2) providing greater assurance that curtailed water rights holders will report information regarding continued exercise of their senior rights that will assist the Board to refine curtailments. As opposed to the process required by the State Water Board's existing authorities, which requires case-by-case investigations, issuance of a draft cease and desist order (CDO) or proposed administrative civil liability (ACL), or both, and the opportunity for an evidentiary hearing, a violation of the emergency regulation is itself immediately enforceable by administrative liability. This would be in addition to any ACL for violation of a CDO pursuant to Water Code section 1845 or for unlawful diversion in violation of Water Code section 1052. Due to the potential for more timely and serious enforcement, the emergency regulation is expected to yield much greater compliance, and compliance promptly enough to prevent injury to senior water rights holders;
12. Proposed California Code of Regulations, title 23, section 875 provides that the Deputy Director for the Division of Water Rights may issue curtailment orders, and identifies sources of sufficiently reliable information upon which to base a decision to issue those orders. It additionally provides clarification that curtailment orders will be initially issued by mail, and establishes an electronic notice procedure for changes to curtailment orders. Finally, it clarifies that, unlike curtailment notices, curtailment orders issued pursuant to that section are subject to the State Water Board's petition for reconsideration process;
13. The Board recently added, by emergency regulation, article 24 to division 3, chapter 2 of California Code of Regulations, title 23. Article 24 contains section 878.1, which identifies certain limited minimum health and safety needs that may be authorized notwithstanding the need for curtailment, and declaring use under even more senior water rights to be a waste and unreasonable use when those minimum health and safety needs cannot be met. Currently, section 878.1 only applies to curtailment orders issued pursuant to section 877 of that article, which addresses minimum flows in Deer, Mill and Antelope Creeks. The proposed emergency regulation for statewide drought-related curtailment of water diversions to protect senior water rights would amend section 878.1 so that the health and safety section would not apply to curtailment orders issued due to lack of water availability pursuant to section 875;
14. The State Water Board recognizes that strict application of the priority system can have harsh consequences for many water users that depend on diversions for water uses that are important on a personal, local, regional and state-wide level, and that many water users are working together to find mutually acceptable solutions to the water shortage. Section 878.3 would establish a methodology for water users to propose alternatives to curtailment orders based on priority under section 875, and would allow the Executive Director to approve such agreements, provided that the agreements do not injure other legal users of water and do not unreasonably harm fish and wildlife as compared to the curtailment methods described in section 875;
15. Emergency regulations adopted under Water Code section 1058.5 remain in effect for up to 270 days;

16. On June 20 and 21, 2014, the State Water Board issued public notice that the State Water Board would consider the adoption of the regulation at the Board's regularly-scheduled July 1, 2014 public meeting, in accordance with applicable State laws and regulations. The State Water Board also distributed for public review and comment a Finding of Emergency that complies with State laws and regulations;
17. On April 25, 2014, the Governor suspended the review required by the California Environmental Quality Act to allow the State Water Board to adopt emergency regulations pursuant to Water Code section 1058.5, as it deems necessary to prevent the waste, unreasonable use, unreasonable method of 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;
18. As discussed above, the State Water Board is adopting the emergency regulation because of emergency drought conditions, the need for prompt action, and current limitations in the existing enforcement process;
19. Proposed California Code of Regulations, title 23, section 875, subdivision (c), provides that curtailment orders will be mailed to each water right holder or the agent of record on file with the State Water Board, Division of Water Rights and that the order shall be accompanied by the Deputy Director's determination of the: (i) quantity of water supply available by priority or type of right; (ii) total water right demand, including the known quantity and basis of right; and (iii) the State Water Board's assumptions pertaining to the diverter's right. In addition, the Deputy Director shall provide information regarding the quantity of water that should be made available by the prior curtailment of more junior water rights. This information will also be posted to the State Water Board's website at least five working days prior to issuance of any curtailment orders. The State Water Board will also send information electronically out via ltr lists it maintains to affected water right holders, including drought notices and updates regarding curtailments and notices of data used to support curtailments and suspension of curtailments. The State Water Board will also provide the same information for curtailment notices issued under the State Water Board's existing processes;
20. The Division of Water Rights will timely suspend curtailment notices under the existing process and curtailment orders pursuant to the emergency regulation based on hydrology;
21. Given complexities surrounding the relative priority of individual pre-1914 appropriative water rights and riparian water rights, the emergency regulation does not apply curtailment orders to these categories of water rights. However, in light of the complexities regarding the relative priority of riparian and pre-1914 appropriative rights, upon receipt of a complaint alleging interference with a water right by a riparian or pre-1914 water right holder, or information indicating unlawful diversion of stored water by riparians or pre-1914 water right holders, the Deputy Director may issue an order to these diverters requiring the diverter to provide certain information necessary for determining issues of relative priority. Staff are encouraged to investigate whether curtailment notices and potential enforcement under the Board's existing processes should be pursued for these diverters based on the information received;

22. To assure that the State Water Board is prepared for another dry year, it will engage with stakeholders in various watersheds over the next six months to refine data and gather input on how to most effectively implement and enforce the water rights priority system in future dry years. The primary objective is to improve the State Water Board's and the water users' confidence in the technical tools and analysis that will be used for making determinations on water availability relative to water rights priority. The Executive Director and staff will provide a report with recommendations to the Board by January 31, 2015. As part of this process, State Water Board staff and stakeholders will consider: 1) the State Water Board's January 1978 "Dry Year Program" and its recommendations for enforcing the water rights priority system; 2) the 2014 curtailment and complaint process; 3) the quality of the data in the water rights database for post-1914 and pre-1914 appropriate water rights and riparian water rights (including as compared to the reported demand data in the 1978 Dry Year Program Report, statewide planning models and other available information); and 4) opportunities to expand and improve data and database capabilities to assist with the implementation of the water rights priority system in future dry years;
23. Pursuant to Water Code section 7, the State Water Board is authorized to delegate authority to the Executive Director and to the Division of Water Rights Deputy Director. The State Water Board has delegated authority to the Executive Director and to the Deputy Director for the Division of Water Rights; and

THEREFORE BE IT RESOLVED THAT:

1. The State Water Board adopts California Code of Regulations, title 23, sections 875 and 878.3, and amends sections 878.1 and 879, as appended to this resolution as an emergency regulation;
2. The State Water Board staff will submit the regulation to the Office of Administrative Law (OAL) for final approval;
3. 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, the Deputy Director for the Division of Water Rights or their designees may make such changes;
4. These regulations shall remain in effect for 270 days after filing with the Secretary of State unless the State Water Board determines that it is no longer necessary due to changed conditions, or unless the State Water Board renews the regulations due to continued drought conditions as described in Water Code section 1058.5;
5. As quickly as possible and not later than 30 days after receipt of any petition for reconsideration of a curtailment order issued pursuant to this emergency regulation, State Water Board, Division of Water Rights staff shall conduct an initial review of the petition to determine if the petition raises significant factual issues that are likely to merit reconsideration of the curtailment order. In cases where significant factual issues that are likely to merit reconsideration of a curtailment order are identified, the Division of Water Rights shall immediately suspend any applicable curtailment order until such time as the petition for reconsideration is acted upon. The Executive Director shall provide frequent reports to the Board regarding matters raised in petitions for reconsideration; and

6. Except for purposes of enforcement of a curtailment order issued pursuant to this regulation, this regulation and any curtailment order issued hereunder shall not be cited or relied upon as authority for, or evidence of, any water right affected or protected by this 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 July 2, 2014.

AYE: Chair Felicia Marcus
Vice Chair Frances Spivy-Weber
Board Member Tam M. Doduc
Board Member Steven Moore
Board Member Dorene D'Adamo

NAY: None

ABSENT: None

ABSTAIN: None



Jeanine Townsend
Clerk to the Board

§ 875 Curtailments Due to Lack of Water Availability

- (a) California is in a state of extreme drought, and the Governor has issued a proclamation of a state of emergency based on these drought conditions.

Under such drought circumstances, Water Code section 1058.5 provides for the State Water Resources Control Board to adopt emergency regulations to provide for curtailments in order of water right priority when water is not available under the diverter's priority of right.

- (b) After the effective date of this regulation, when flows are sufficient to support some but not all diversions, the Deputy Director for the Division of Water Rights, or her designee, may issue curtailment orders to post-1914 appropriative water right holders in order of water right priority, requiring the curtailment of water diversion and use except as provided in sections 878 and 878.3.

- (c) In determining whether water is available under a diverter's priority of right and to issue or suspend curtailment orders, the Deputy Director for the Division of Water Rights, or her designee, may rely upon:

- (1) Relevant available information regarding date of priority, including claims of first use in statements of water diversion and use and other information contained in the Division of Water Rights files. Absent evidence to the contrary, riparian water rights are presumed senior to appropriative water rights with regard to natural flow for purposes of curtailments pursuant to this section.
- (2) Water right demand projections based on: recent reports of water use for permits and licenses, 2010, or later, statements of water diversion and use, or reports submitted by watermasters.
- (3) Water availability projections based on:
 - i. Projected full natural flow data supplied by the Department of Water Resources, where available;
 - ii. Projections from the National Weather Service's River Forecasts website, where available;
 - iii. Stream gage data, where available; or
 - iv. Other data that the Deputy Director for the Division of Water Rights determines is appropriate, given data availability and reliability and staff resources.
- (4) To the extent that it is available and staff resources permit, the Deputy Director for the Division of Water Rights may also consider additional pertinent and reliable information when determining water right priorities, water availability and demand projections, and whether curtailment orders should be suspended.

Any order issued pursuant to this section shall be accompanied by the Deputy Director's determination of the: (i) quantity of water supply available by priority or type of right; (ii) total

water right demand, including the known quantity and basis of right; and (iii) the State Water Board's assumptions pertaining to the diverter's right. When issuing curtailment orders to senior water right holders, the Deputy Director shall include information regarding the quantity of water that should be made available by the prior curtailment of more junior water rights.

(d) Curtailment orders will initially be mailed to each water right holder or the agent of record on file with the State Water Resources Control Board, Division of Water Rights. The Deputy Director shall provide notice by email or the State Water Board's drought webpage at least five (5) working days prior to issuance of curtailment orders. The water right holder or agent of record is responsible for immediately providing notice of the orders to all diverters and/or water users exercising the water right.

(e) Within 7 days of the effective date of this regulation, the State Water Resources Control Board will establish an email distribution list that water right holders should join to receive drought notices and updates regarding curtailments. Notice provided by email or by posting on the State Water Resources Control Board's drought web page shall be sufficient for all purposes related to drought notices and updates regarding curtailments.

(f) All curtailment orders issued under this article shall be subject to reconsideration under article 2 (commencing with section 1122) of chapter 4 of part 1 of division 2 of the California Water Code.

§ 878.1 Minimum Health and Safety Needs

(a) This section shall not apply to curtailments issued under section 875 of this article.

(ab) A diversion that would otherwise be subject to curtailment may be authorized if:

- (1) The diversion is necessary for minimum 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.

(bc) Given the essential nature of water in sustaining human life, use even under a more senior right for any other purpose when domestic and municipal supplies required for minimum health and safety needs cannot be met is a waste and unreasonable use under the California Constitution, Article X, § 2.

- (1) Diversions for domestic and municipal use under any valid basis of right, of less than 50 gallons per person, per day, and not exceeding 10 acre-feet per year of storage or 4,500 gallons per day of direct diversion, may continue

after issuance of a curtailment order 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 certification, under penalty of perjury, of compliance with the requirements of subdivisions ~~(b)~~(1)(A)-(G), below. The Deputy Director may request additional information or set additional requirements on continued diversion.

- (A) Not more than 50 gallons per person per day will be diverted under all bases of right;
- (B) The diversion is necessary to achieve the minimum amount of water necessary for health and safety, up to 50 gallons per person per day, after all other alternate sources of potable water have been used. To the extent other potable water is available, those sources will be used first and the total used will not exceed 50 gallons per person, per day;
- (C) The diverter or all end users are operating under the strictest existing conservation regime for that place of use, if such a plan exists for the area or service provider, or shall be operating under such regime within 30 days. 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) No potable water will be used for outdoor landscaping while this approval is in effect. Water service providers must implement this provision as rapidly as possible, up to a limit of 15 days. If additional approvals are required before implementation of the conservation regime, the diverter must certify that all possible steps will be taken to ensure prompt approval;
- (E) If the diverter has the authority to set rates, that such rates are set to encourage conservation, or that changing the rates to encourage conservation shall be considered at the next opportunity, but no later than 30 days from certification. If additional approvals are required before implementation of such a rate structure, the diverter must certify that all possible steps will be taken to ensure prompt approval. If the diverter does not implement rates to encourage conservation, it must submit to the Deputy Director with the next required reporting an explanation of why such rate setting is inappropriate despite the current drought;
- (F) If the diverter is a public water supplier under Water Code section 350 et seq., that it has declared a water shortage emergency condition and adopted regulations and restrictions on the delivery of water or has noticed a meeting for adoption within the next 10 days, and shall

adopt conservation and water delivery restrictions and regulations within the next 30 days. To the extent regulations and restrictions require additional approval, the diverter must certify that all possible steps will be taken to ensure prompt approval.

(G) The diverter 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 will pursue the steps in an attached plan to identify and secure additional water.

(2) To the extent that a diversion for domestic or municipal use requires more than 50 gallons per person, per day to meet minimum health and safety needs, or for up to 50 gallons per person, per day exceeding 10 acre-feet of storage or a total of 4,500 gallons per day, the continuing diversion of water after issuance of a curtailment notice for the diversion requires submission of a petition and approval by the Deputy Director. The Deputy Director may condition the approval on implementation of additional conservation measures and reporting requirements. Any petition to continue diversion to meet minimum health and safety needs of more than 50 gallons per person, per day, or for up to 50 gallons per person, per day exceeding 10 acre-feet of storage or a total of 4,500 gallons per day, must:

- (A) Describe the specific circumstances that make the requested diversion amount necessary to meet minimum health and safety needs, if a larger amount is sought.
- (B) Certify compliance and provide documentation of the actions described in subdivision (b)(1)(C) – (b)(1)(G).
- (C) Describe any other additional steps the diverter will take to reduce diversions and consumption.
- (D) Provide the timeframe in which the diverter expects to reduce usage to no more than 50 gallons per person, per day, or why minimum health and safety needs will continue to require more water.

(e) All other diversions for minimum health and safety needs, except for an imminent threat to life, require approval from the Deputy Director. The Deputy Director may approve a petition under this subdivision or subdivision (b)(2) upon a finding that the diversion is in furtherance of 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 diversion on senior water rights or instream beneficial uses, and may condition approval as appropriate to ensure that the diversion and use are reasonable and in the public interest.

~~(de)~~ “Minimum health and safety needs,” as used in this article, means the amount of water necessary for prevention of adverse impacts to human health and safety, for which there is no reasonable alternate supply. “Minimum health and safety needs” include:

- (1) Domestic and municipal supplies as described in subdivision ~~(bc)~~.
- (2) 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, and as authorized by the Deputy Director.
- (3) Water supplies identified by the California Department of Forestry and Fire Protection, or another appropriate authority, as regionally necessary for fire preparedness, and as approved by the Deputy Director.
- (4) 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 regionally necessary to address critical air quality impacts in order to protect public health, and as authorized by the Deputy Director.
- (5) Water supplies necessary to address immediate public health or safety threats, as determined by a public agency with health or safety expertise, subject to approval of the Deputy Director. Such a petition should include a description of the public health need, a description of why the need is immediate, an estimate of the amount of water needed, and a certification that the supply will be used only for the stated need. If necessary to resolve immediate public health or safety threats, the diversion may continue while the petition is being prepared and is pending. The Deputy Director may require additional information to support the initial petition, as well as information on how long the diversion is expected to continue, and a description of other steps taken or planned to obtain alternative supplies.
- (6) Other water needs not identified, 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, subject to Deputy Director approval. Petitioners wishing to continue diversions for these uses must identify the health and safety need, include approval from the appropriate public entity, 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.

~~(ef)~~ Notice of certification, petitions and decisions under this section and section 878 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.

§ 878.3 Alternative Water Sharing Agreements

Water users may propose regional alternatives to curtailment that achieve the purposes of the curtailment process described under section 875. Petitions to implement alternative water sharing agreements to coordinate diversions or otherwise share water in place of State Water Resources Control Board-issued curtailment orders under this article may be submitted to the Executive Director at any time. Petitioners must demonstrate to the satisfaction of the Executive Director that any agreement under this section will not injure legal users of water not signatory to the agreement and that the agreement does not impose an unreasonable impact on fish and wildlife. The Executive Director may approve a petition, subject to conditions appropriate to ensure that the standard of approval are met, including reporting requirements. Diversions covered by an approved agreement pursuant to this section are subject to this article and violations of such approved agreement shall be subject to enforcement as a violation of this article or as an unauthorized diversion or use.

Notice of petitions and decisions under this section will be posted as soon as practicable on the State Water Resources Control Board's drought webpage. The Executive Director may issue a decision under this article prior to providing notice. Any interested person may file an objection to the petition or decision. The objection shall indicate the manner of service upon the parties that petitioned for approval of the regional alternative. The State Water Resources Control Board will consider any objection, and may hold a hearing thereon, after notice to all interested persons.

§ 879. Reporting

- (a) All water users or water right holders issued a curtailment order under this article are required within five days to submit under penalty of perjury a certification of the following actions taken in response to the curtailment order, certifying, as applicable, that:
- (1) Diversion under the water right identified has been curtailed;
 - (2) 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 continue only to the extent that they are direct diversions for hydropower;
 - (4) A petition has been filed as authorized under section 878.1, that the diversion will be authorized if the petition is approved, that 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;

- (5) A certification has been filed as authorized under section 878, subdivision (b) or section 878.1, subdivision (b)(1), that the subject water right authorizes the diversion in the absence of a curtailment order; or
- (6) The only continued water use is for instream purposes.

(b) All water users or water right holders whose continued diversion out of order of water right seniority are authorized under section 878.1 are required to submit, under penalty of perjury, monthly reports during the effective period of the curtailment order. In addition to any reporting required as a condition of certification or of approving a petition, such reports should describe:

- (1) how the diverter complies with any conditions of continued diversion, including the conditions of certification under section 878.1, subdivision (b)(1);
- (2) any failures to comply with conditions, including the conditions of certification under section 878.1, subdivision (b)(1), and steps taken to prevent further violations;
- (3) conservation and efficiency efforts planned, in the process of implementation, and implemented, as well as any information on the effectiveness of implementation;
- (4) efforts to obtain alternate water sources;
- (5) if the diversion is authorized under section 878.1, subdivision (b):
 - (i) progress towards implementing the measures described in section 878.1, subdivision (b)(1)(C)-(F), to the extent that implementation was incomplete at the time of certification or petition under section 878.1, subdivision (b) or the most recent report under this subdivision;
 - (ii) progress under any plan described in section 878.1, subdivision (b)(1)(G) or (b)(2)(C); and
- (6) if the diversion is authorized under section 878.1, subdivision (d)(3):
 - (i) the rate of diversion if it is still ongoing;
 - (ii) whether the water has been used for any other purpose;
 - (iii) the date diversion ceased, if applicable.

(c) Upon receipt of a complaint alleging interference with a water right by a riparian or pre-1914 appropriative water right holder or upon receipt of information that indicates unlawful diversions of stored water by riparians or pre-1914 appropriative water right holders, the Deputy Director may issue an order under this article requiring such water right holders to provide additional information regarding the property patent date, the date of initial appropriation, and diversions made or anticipated during the current drought year. Any water right holder receiving an order under this subdivision shall provide the requested information within five (5) days.