

**STATE WATER RESOURCES CONTROL BOARD
RESOLUTION NO. 2023-0044**

ADOPTING EMERGENCY INFORMATION ORDER REGULATIONS FOR THE
CLEAR LAKE WATERSHED

WHEREAS:

1. The State Water Resources Control Board (State Water Board or Board) proposes to adopt Emergency Information Order Regulations for the Clear Lake Watershed (emergency regulations). The emergency regulations will allow the Board to collect information from some or all water users, including groundwater pumpers, in the Clear Lake Watershed (watershed). The information collected will inform the Board's evaluation of how groundwater pumping and other water uses in the watershed may influence creek flows that are critical for Clear Lake hitch (hitch) spawning and migration and will assist the Board's efforts to protect the hitch;
2. On April 21, 2021, Governor Gavin Newsom proclaimed a drought state of emergency for [Mendocino and Sonoma counties](#). On May 10, 2021, the Governor expanded the emergency to 41 counties, including [Lake County](#). On October 19, 2021, the Governor extended the emergency to [all of California](#). On March 28, 2022, the Governor acknowledged [continued drought conditions and called for increased conservation](#);
3. On March 24, 2023, Governor Newsom issued [Executive Order N-5-23](#), which recognized that while conditions have improved in some parts of the State, other parts remain in drought, and continued State action is needed to address ongoing impacts of the drought emergency, including drought-related harm to native fish in the Clear Lake Watershed. Executive Order N-5-23 directs the State Water Board and California Department of Fish and Wildlife (CDFW) to evaluate minimum instream flows and other actions needed to protect the Clear Lake hitch; work with water users, Native American Tribes, and other parties on voluntary measures; and consider emergency regulations to establish minimum instream flows to mitigate the effects of drought. Executive Order N-5-23 also suspends the environmental review required by the California Environmental Quality Act in Public Resources Code, Division 13 (commencing with Section 21000) and regulations adopted pursuant to that Division to address the impacts of drought as quickly as possible;

4. The Clear Lake hitch, also known as “chi,” is a medium-sized fish found only in Clear Lake and its tributaries. Each spring, adult hitch spawn in Clear Lake creeks before returning to the lake. Based on best available science, juvenile hitch need at least two to three weeks to hatch and migrate to the lake, but they can remain in creeks for several months if there is enough water, which increases their likelihood of survival. The hitch is an important species in the watershed and holds cultural and ecological significance. The hitch population has been in decline for some time, but the recent droughts have exacerbated the decline. There are many factors potentially impacting the hitch population including reduced and degraded habitat, passage barriers in the creeks, predation, competition with invasive species, and pollution; but a primary threat to hitch survival is water availability in creeks where hitch spawn and migrate;

5. While historical accounts and oral histories describe large spawning runs that crowded the creeks in the late 19th century, more recent observations and scientific studies indicate drastically less hitch exist in Clear Lake and its tributaries. In 2014, California designated the hitch as a threatened species, and CDFW began visual spawning surveys throughout the watershed. Three years later, the United States Geological Survey (USGS) conducted [gill net surveys](#) regarding conditions in the lake. The results of these investigations indicated that (I) the hitch population has declined from historical levels, (II) lack of flow through creeks reduced the habitat available for hitch spawning in 2021 and 2022, and (III) there was near complete failure of juvenile hitch recruitment after 2017. As hitch have a six-year life cycle, additional drought years without intervention may jeopardize population recovery;

6. Local Native American Tribes have been working to protect the hitch for many years. In 2014, some of these Tribes and CDFW began hitch rescues, which involves capturing and collecting hitch from drying creeks or disconnected pools and relocating them to parts of the watershed that can support their survival. Tribal environmental departments are also conducting numerous hydrological and biological monitoring and modeling efforts. The State Water Board appreciates the activities conducted by Native American Tribes and values the traditional ecological knowledge that Native American Tribes have gained and passed down from generation to generation regarding the hitch and the importance of this knowledge in addressing the hitch emergency;

7. While some Clear Lake creeks have been known to go dry at some point each year, the timing appears to have changed. Oral histories describe the creeks flowing through September in many years. Conversely, in 2022, many of the creeks were dry by March. Even with the very wet spring of 2023, most creeks only flowed through June and resulted in more than 60 hitch rescues;

8. In December 2022, a coalition of local Native American Tribes including the Big Valley Band of Pomo Indians, Robinson Rancheria of Pomo Indians, Habematolel Pomo of Upper Lake, and Scotts Valley Band of Pomo Indians requested that state and federal agencies, including the State Water Board, help address the extinction risk faced by the hitch. Shortly thereafter, the Lake County Board of Supervisors [asked the Board](#) to increase activities to stop illegal water diversions affecting Clear Lake and its tributaries and consider regulations to assure the continued viability of the Clear Lake hitch and other aquatic species;

9. In January 2023, the State Water Board's Division of Water Rights (Division) began engaging with representatives from the coalition of Native American Tribes, Lake County, state and federal agencies, the agricultural community, and other interested parties to better understand the problems facing the hitch, identify solutions, and encourage voluntary actions to protect the hitch in the near and long terms. The Division's work has been primarily focused on the following creeks where hitch are known to spawn: Cole, Kelsey, Adobe, Manning, Scotts, and Middle. Through public meetings and a [voluntary actions letter](#) (sent to more than 2,600 property owners), the Division asked water users to share data, participate in monitoring programs, and reduce water use in February through June. As a result of this engagement, the Division received fourteen responses from water users who are interested in sharing information about their water use or allowing the state access to their lands for hitch monitoring and recovery efforts. Moreover, a small coalition of agricultural landowners formed a group called the Lake County Land Stewards with the purpose of developing a data collection and evaluation program to evaluate contributors to creek dewatering;

10. The Division is meeting regularly with representatives from the agricultural community to discuss voluntary actions, explore ways to improve data quality and support longer-term data collection, understand concerns and interest in sharing information and provide updates on the state's activities. The Division is also meeting regularly with representatives from the coalition of Tribes, Lake County, and state and federal agencies to share updates, coordinate field work and data collection, share information, connect other agencies to data resources, convey or refer findings that may not always be in the Division's jurisdiction, share funding opportunities, and present updates on the Division's enforcement activities;

11. In January 2023, the Division also began collecting and evaluating existing data to identify how surface water diversions and groundwater extractions in the Clear Lake Watershed are impacting creek flows. The Division's preliminary analysis, which includes data from multiple sources described

above, indicates that groundwater pumping may be impacting creek flows, but additional data is needed to understand the magnitude and timing of potential impacts. The Division has identified well locations, construction information, and pumping volume as needed additional data;

12. The State Water Board has a duty to take into account and protect the state's public trust resources, including fisheries, whenever feasible. (*National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419; *Environmental Law Foundation v. State Water Resources Control Board* (2018) 26 Cal.App.5th 844.) The Board requires additional data to better understand the factors that affect creek flows in the Clear Lake Watershed and to protect fish populations, evaluate potential management actions and voluntary projects, and coordinate state-funded projects;
13. A robust understanding of how groundwater and surface water interactions in the Clear Lake Watershed affect creek flows will assist State Water Board efforts to identify measures that will protect the hitch population as well as other reasonable and beneficial diversions and uses of water in the watershed;
14. While there has been positive engagement and collaboration with local water users, the State Water Board requires additional information to evaluate how groundwater pumping and other water uses may influence creek flows that are critical for Clear Lake hitch spawning and migration and will assist the Board's efforts to protect the hitch. The Board has determined that authority to issue information orders in the Clear Lake Watershed is necessary to collect this data;
15. On September 5, 2023, the Division released draft emergency regulations for a public comment period ending on October 31, 2023. The Division also held two public workshops in October 2023, to accept comments and answer questions;
16. The State Water Board proposes to adopt the emergency regulations in accordance with title 2, division 3, chapter 3.5 of the Government Code (commencing with section 11340). The Board has the authority to adopt emergency regulations pursuant to Executive Order N-5-23;
17. The emergency regulations allow for alternative compliance that has the potential to improve reporting compliance and support local collaborative solutions. The State Water Board recognizes that listening to interested parties, addressing concerns, and offering alternatives can help improve data

quality, increase participation, and foster sustainable relationships. Furthermore, the Board values local knowledge and recognizes that providing for alternative compliance can help establish standards for collaboration and demonstrate whether voluntary efforts can help prevent the extinction of a species;

18. The State Water Board is considering these emergency regulations due to the pressing threat to hitch populations resulting from the conditions in the Clear Lake Watershed, the need for prompt information-gathering, and the unique attributes of the watershed. Pursuant to Water Code section 7, the Board is authorized to delegate authority to the Executive Director and to the Deputy Director.

THEREFORE BE IT RESOLVED THAT:

The State Water Board:

1. Adopts sections 1050, 1051, and 1052 within Title 23, Division 3, Chapter 4.6 of the California Code of Regulations as emergency regulations;
2. The Division will submit the emergency regulations to the Office of Administrative Law (OAL) for final approval;
3. The emergency regulations will remain in effect for one year after filing with the Secretary of State unless: (i) the State Water Board determines that the regulations are 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 the regulations are deemed repealed, or (iii) the Board renews or updates the regulations due to continued drought conditions as described in Water Code section 1058.5;
4. If, during the approval process, the State Water Board, Division, or OAL determines that minor corrections to the language of the emergency regulations or supporting documentation are needed for clarity or consistency, the Board's Executive Director or designee may make such changes;
5. The Division will continue to coordinate with local, state, and federal agencies, local water users, Native American Tribes, and other appropriate entities to support surface water and groundwater monitoring, install monitoring equipment, collect data that supports Clear Lake hitch protection efforts and evaluate how various actions could provide an alternative means for collecting the information needed to protect the hitch population, and use

the data received to refine hitch protection efforts and reassess the activities potentially impacting the hitch population;

6. The State Water Board delegates to the Deputy Director of the Division the authority to act on requests for approvals pursuant to the emergency regulations.

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 December 6, 2023.

AYE: Chair E. Joaquin Esquivel
Vice Chair Dorene D'Adamo
Board Member Sean Maguire
Board Member Laurel Firestone
Board Member Nichole Morgan

NAY: None

ABSENT: None

ABSTAIN: None



Courtney Tyler
Clerk to the Board