

**Enhanced Water Use Reporting and Curtailment of Diversions due to Lack of
Water Availability in the Sacramento – San Joaquin Delta Watershed**

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In Title 23, Division 3, Chapter 2, Article 24, amend Sections 876.1 and 878.2 to read:

Article 24. Curtailment of Diversions due to Drought Emergency

**§ 876.1 Emergency Curtailments Due to Lack of Water Availability in the
Sacramento-San Joaquin Delta Watershed**

- (a) This section applies to direct diversions and diversions to storage, of natural and abandoned flows, in the Delta Watershed as defined in section 877.1. This section also applies to the redirection of water released from storage in the Delta Watershed, except to the extent authorized by a water right or contract.
- (b) After the effective date of this regulation, when flows are determined to be insufficient to support all diversions, the Deputy Director as defined in section 877.1 may issue curtailment orders as defined in section 877.1 to water right holders and claimants in the Delta Watershed in order of water right priority, requiring the curtailment of water diversion under designated water rights and claims, except as provided in sections 878, 878.1, 878.2, and [879.1 subdivision (b)]. Before issuing curtailment orders to water right holders and claimants in the Legal Delta, the Deputy Director will consult with and obtain the concurrence of the Delta Watermaster.
- (c) Initial orders requiring curtailment or reporting will be mailed to each water right holder, claimant, or the agent of record on file with the State Water Board, Division of Water Rights within the Delta Watershed. The initial orders will require reporting in accordance with section 879, subdivision (d)(1) and will either require curtailment or will instruct the water right holder, claimant, or agent of record regarding procedures for potential future curtailments. The water right holder, claimant, or agent of record is responsible for immediately providing notice of the orders to all diverters exercising the water right or claim covered by the orders. Communications regarding changes in water availability, including notification of when curtailments of water diversions are required and when curtailments are temporarily suspended or reimposed, will be provided by email to the State Water Board's Delta Drought email distribution list and by posting on the State Water Board's drought webpage. Notice provided by email and by posting on the State Water Board's drought webpage shall be sufficient for all

purposes related to required curtailments and reporting pursuant to this section and section 879.

(d) In determining whether water is unavailable under a water right holder or claimant's priority of right and whether to order curtailment of water diversions under specific water rights, the Deputy Director will consider:

(1) Relevant available information regarding date of priority, including but not limited to claims of first use in statements of water diversion and use, judicial and State Water Board decisions and orders, 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 for the purposes of curtailments pursuant to this section.

(2) Monthly water right demand projections based on reports of water use for permits and licenses, or statements of water diversion and use, from calendar years 2018, 2019, or 2020, or 2021, and water right demand projections based on annual watermaster reports.

(3) Monthly water right demand projections based on information submitted in response to an informational order issued under section 879, subdivision (d).

(4) Water supply projections based on the following sources of forecasted supply data:

(A) Monthly full natural flow forecasts contained in the Department of Water Resources' California Cooperative Snow Surveys Bulletin 120 Water Supply Forecast, where available;

(B) Daily full natural flow forecasts from the California Nevada River Forecast Center; and

(C) Other available and reliable data on projected or actual precipitation and runoff events that may inform water availability at a monthly or sub-monthly scale.

(5) Relevant available information regarding stream system disconnection where curtailing diversions would not make water available to serve senior downstream water rights or claims, including seasonal or

temporary disconnections.

- (6) The Deputy Director may also consider any other pertinent, reliable, and publicly available information when determining water right priorities, water availability, water supply projections, and demand projections.
- (7) Evaluation of available water supplies against demands may be performed using the Water Unavailability Methodology for the Delta Watershed, or comparable tools. The Water Unavailability Methodology for the Delta Watershed is described in the Water Unavailability Methodology for the Delta Watershed report dated April 19, 2022, which is hereby incorporated by reference. Evaluation of available supplies against demands may be performed at the Hydrologic Unit Code level 4 Sacramento and Hydrologic Unit Code level 4 San Joaquin River watershed scale, or at the subwatershed scale. Subwatersheds within the Delta Watershed are defined in the Water Unavailability Methodology for the Delta Watershed report dated April 19, 2022, and were established based on Hydrologic Unit Code level 8 watersheds.
- (e) A water right holder or claimant may submit information to the Deputy Director to: support a proposed correction to the water right priority date of the right for which the order was issued; or propose that curtailment may not be appropriate for a particular diverter or in a specific stream system as demonstrated by verifiable circumstances, such as a system that has been adjudicated and is disconnected and curtailment would not make water available to serve senior downstream water rights or claims. The Deputy Director will review timely-provided proposals and supporting information and analyses as soon as practicable, make a determination regarding the proposal, and inform the affected water right holder or claimant of any appropriate update for purposes of water diversion curtailment orders. Before making any determinations within the Legal Delta, the Deputy Director will consult with the Delta Watermaster.
- (f) Water right holders and claimants in the Delta Watershed must either subscribe to the Delta Drought email distribution list referenced in subdivision (c) or frequently check the State Water Board's drought webpage to receive updated information regarding water diversion curtailment and reporting orders and water unavailability.
- (g) The Deputy Director will temporarily suspend curtailments for some diverters, in order of water right priority, when water availability increases or is projected to increase due to precipitation and runoff events or due to reductions in demand,

and the Deputy Director determines that such increased water availability warrants a suspension. The Deputy Director will consider the best available information, such as water supply forecasts from the California Department of Water Resources and other similarly reliable sources, to determine the geographic scope and duration of suspension. By no later than October 1, 2021, and by no more than every 30 days thereafter, the Deputy Director will consider reliable and publicly available information that supports suspension, extension of suspension, or reimposition of curtailments of water diversions, and will publicly issue an update explaining any decisions resulting from the consideration of that information.

(h) All curtailment orders issued under this section 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.

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.

§ 878.2 Alternative Water Sharing Agreements

Water users may propose alternatives to water diversion curtailment that achieve the intent of the curtailment process described under section 876.1 by submitting a proposal to the Deputy Director. Joint proposals must be explicitly agreed to by all participants and describe the setting, the parties, the actions, the provisions for monitoring, record keeping and reporting, and the purported benefits of the proposal in sufficient detail to demonstrate to the satisfaction of the Deputy Director that implementing the proposal will not injure non-party legal users of water or result in an unreasonable impact on fish and wildlife. In considering a proposal under this section, the Deputy Director may request additional information or consult with other entities that may have technical or legal information that should be considered in evaluating such proposals, including but not limited to the California Department of Water Resources (DWR) and United States Bureau of Reclamation (Reclamation). The Deputy Director will consult with the Delta Watermaster on any proposals among diverters within the Legal Delta. A proposal may be implemented pending review by the Deputy Director provided that potentially affected water right holders and claimants, including but not limited to DWR and Reclamation, concur with the proposal and no objections to the proposal are submitted to the Deputy Director. The Deputy Director may approve a proposal subject to conditions, including

record keeping and reporting requirements, and provided that the Deputy Director finds implementing the proposal will not injure non-party legal users of water or result in an unreasonable impact on fish and wildlife. Diversions consistent with a proposal implemented or approved pursuant to this section are subject to this article, and violations of the terms of the proposal shall be subject to enforcement as a violation of this article or as an unauthorized diversion or use of water.

Notice of proposals and decisions under this section will be posted as soon as practicable on the State Water Board's Delta drought webpage. The Deputy Director may issue a decision under this section prior to providing such notice. Any interested person may file a comment or objection to the proposal or decision with the Deputy Director with simultaneous service to the parties who submitted the proposal. The Deputy Director will consider any comment or objection. The State Water Board may hold a hearing on any proposal to which parties have objected, after notice to all interested persons.

Authority: Sections 1058, 1058.5, Water Code

Reference: Cal. Const., Art. X, § 2; Sections 100, 109, 275, 1011, 1011.5, 1051.5, Water Code; *City of Barstow v. Mojave Water Agency* (2000) 23 Cal.4th 1224.