

September 16, 2021

Submitted via email to DWR-MillDeerDrought@waterboards.ca.gov

E. Joaquin Esquivel
Chair, State Water Resources Control Board
1001 I Street
Sacramento, CA 95814

Re: Draft Resolution and Emergency Regulation Regarding Curtailment of Diversions to Protect Water Supplies and Threatened and Endangered Fish in the Deer and Mill Creek Watersheds

Dear Chair Esquivel,

The California Cattlemen's Foundation (CCF) appreciates the opportunity to comment on the Draft Resolution and Emergency Regulation authorizing the State Water Resources Control Board (Board) to issue curtailment notices for certain diversions in the Deer and Mill Creek watersheds, regardless of priority of right. CCF is a California Nonprofit Public Benefit Corporation representing cattle ranchers and beef producers throughout California who pride themselves on the responsible stewardship of the state's land, water and wildlife resources. Our purpose is to support and engage in educational, legal, charitable and research activities related to beef in California. We represent the interests of many ranchers and producers in the Deer and Mill Creek areas who will be directly impacted by this emergency regulation.

Cattle ranchers and beef producers rely on the ability to divert water to provide water for the health and well-being of their cattle. These diversions also have incidental benefits for wildlife throughout California's 38 million acres of grazed rangelands. Without the ability to divert water, many ranchers will be forced to liquidate their livestock, resulting in many ranchers suffering devastating financial losses and some being forced out of business.

Locating alternate water sources, such as trucking in water, is extremely difficult and financially burdensome for cattle producers. **The agricultural industry in California is a leading source of revenue, the main provider of the nation's food supply and a massive source of jobs for Californians.** CCF, as well as the cattle ranchers and beef producers whose interests we represent, urge the Board to always remain mindful of this information when crafting regulations that impact California agriculture, including emergency curtailment orders.

CCF recognizes that the ongoing drought emergency presents extreme challenges for the Board and the need to prioritize the diversion and use of the Deer and Mill Creek watersheds' valuable water. While CCF would prefer not to have curtailments that prevent cattle ranchers and beef producers from having access to water for their livestock, CCF does recognize the lack of water currently in the State of California and appreciates the Board's efforts to engage on this topic.

In finalizing the Emergency Regulation, CCF asks that the Board bear the burden of notifying water-users about drought and curtailment information, that the Board provide consistency and clarity with the exceptions to the curtailment orders and local cooperative solutions and finally that

the Board provide more flexibility in the timeline for water-users to find an alternate water source after curtailment notices are issued.

I. The Burden of Notification Should be on the Board

According to § 876.5(d)(2) of the Emergency Regulation, notice provided by email or by posting on the Board's drought web page is sufficient for all purposes related to drought notices and updates regarding curtailments. This process, while not necessarily a complicated one, places the burden of notification on the water rightsholder to discover and then to figure out the diversion curtailment process and schedule.

Many of California's cattle ranchers are of advanced age and/or live in very rural areas. Many of them do not use computer or cellular technology and are not able to readily access online materials. Asking rightsholders to bear the burden of identifying when the state has issued a curtailment notice for their water right is inappropriate and impractical. While CCF does appreciate that the initial curtailment notices are sent to rightsholders via mail, we would like to request that online communication not be required to find out information about water rights and water unavailability. CCF is not suggesting that there be no online communication, rather we are requesting that online access and information not be the only possible option.

While the Board is taking this process into consideration as it promulgates regulations, CCF urges the Board to consider accessibility and feasibility. The Board is likely to see better responses and more compliance if it provides more information and more interaction with rightsholders. The text of the Emergency Regulations, and even the website itself, is relatively unclear. Without a background in these issues and a high level of specialized education, the information in these regulations and notices can be extremely difficult to understand and apply. FAQs are appreciated, but not entirely sufficient.

II. Consistency and Clarity are Needed Within the Exceptions and Local Cooperative Solutions Guidelines

In § 876.7 of the proposed Emergency Regulation, the Board provides for a limitation on inefficient domestic lawn irrigation. Though CCF agrees that there should not be inefficient surface water use for domestic lawn watering, providing a section in the Emergency Regulation exclusively for this, particularly when the purpose of the regulation is to provide adequate water for endangered fish species, confuses water rightsholders and blurs the exceptions.

Though lawn watering is a domestic use, and the Board has historically provided exceptions for domestic uses in its regulations, providing a written exception for domestic lawn irrigation when there is no exception for necessary livestock watering or other necessary uses is inappropriate and goes against the stated goal of the Emergency Regulation. This is not the only inconsistency in the listed exceptions of the Emergency Regulation.

In § 879(a)(3) of the Emergency Regulation the Board states

Diversions under the water right(s) identified continue only to the extent that they are authorized in accordance with section 878.4 or are non-consumptive uses for which a certification for continued diversion has been submitted as specified in section 878.

However, there is not a listed exception for non-consumptive uses in this Emergency Regulation as there has been in past regulations. Again, this lack of consistency is very likely to confuse rightsholders and will only lead to difficulty in enforcement.

Finally, in § 878.4 of the Emergency Regulation the Board states that if the NMFS and CDFW enter into an agreement with diverters that they determine provides “watershed-wide protection” for the fishery then the diverters may request approval from the Deputy Director to implement the agreement in place of the curtailment orders. Two paragraphs down the Board also describes “other local cooperative solutions” that may be proposed. CCF respectfully requests that the Board clarify in its emergency regulations what it means by “watershed-wide protection” and draws a distinction between what that type of agreement would look like and what “other local cooperative solutions” are.

These suggestions are to provide clarity and consistency to water rightsholders when reading complex emergency regulations and trying to comply with them. While ranchers and beef producers, like other water rightsholders, have the best interest of the land they steward in mind, unclear and inconsistent regulations make it extremely difficult for them to understand what the Board expects of them. CCF urges the Board to take this into consideration when drafting emergency regulations.

III. The Board Should Provide a Minimum Livestock Watering Exemption

As mentioned above, there is an exception for domestic lawn watering within emergency regulations and while here the Board specifies that there should not be inefficient lawn watering, water use for lawn watering is still permissible under the regulation. Though CCF appreciates and recognizes that domestic uses are important, we would also urge the Board to consider that uses like lawn watering are not necessary uses. It should be emphasized in the emergency regulations that there are other necessary uses for water, such as livestock watering which is essential for ranchers and producers to be able to provide the sustainable products that they produce.

CCF strongly urges the Board to consider a necessary livestock watering exception in this Emergency Regulation, as it did with the Scott/Shasta Emergency Regulation. As mentioned in the introduction of this comment, cattle ranchers and beef producers rely on the ability to divert water to provide it for the health and well-being of their cattle. The Board recognized in the Scott/Shasta Emergency Regulation that there are minimum amounts of water that ranchers need to continue diverting to water their livestock; CCF asks that the Board recognize that there are ranchers elsewhere in the state that have the same needs.

IV. Curtailment Notices Provide Very Little Flexibility for Water-Users to Find an Alternate Water Source

The Emergency Regulation states that curtailment orders are effective the day after issuance. Following the receipt of the curtailment notice, water-users then have seven days to send in a self-certification acknowledging that they are complying with the notice. Despite water-users being given only twenty-four hours to stop diverting water, neither the notices nor the Board provides resources or options to help access alternate water sources. The water-users that CCF represents are cattle ranchers and beef producers who have in their care hundreds to thousands of head of cattle that require water. For these hard-working and essential individuals, going more than a day without access to enough water can have dire consequences.

The cattle ranchers and beef producers that CCF represents rely on diverting water to provide for their cattle. During the hot summer months when the curtailment notices are issued, access to fresh water is of the utmost importance. Without access to enough water to provide for livestock, cattle ranchers and beef producers may be forced to sell the cattle that they cannot provide for. This could mean the end of their business, their livelihood and the loss of generations of work. For many California cattle ranchers and beef producers, their land and their farm have been in their families for decades or more. This is more than money to them—it is their heritage.

While CCF acknowledges that this is an emergency regulation which requires a short timeline, CCF urges the Board to consider the consequences of having such a short timeline without providing water-users in these situations with resources to find comparable alternative water sources. We recognize that there are circumstances that require the emergency curtailment of water diversions, and this inevitably will lead to hardships for many cattle ranchers and beef producers. However, providing a flexible timeline will give these water-users much needed time to secure alternate sources of water, funding, and a sustainable plan.

V. Conclusion

CCF appreciates the opportunity to provide feedback on the Draft Resolution and Emergency Regulation. As the Board acts to ensure that sufficient water exists in the Deer and Mill Creek watersheds to protect threatened fish species and to address various other environmental concerns, CCF asks that the Board take into consideration ways that it can do so without causing undue hardships for California's cattle ranchers and beef producers. CCF appreciates the hard work that the Board has put in to engage with stakeholders; however, CCF would like to urge the Board to provide more flexibility and clarity to ensure that cattle ranchers and beef producers do not endure unnecessary struggles.

Sincerely,

A handwritten signature in black ink, appearing to read 'Victoria Rodriguez', written in a cursive style.

Victoria Rodriguez
Public Policy Advocate