



Fact Sheet

Frequently Asked Questions (FAQs) about Mill, Deer creek conditions and curtailments

Overview:

With climate change impacts reducing water levels to almost half of normal volume throughout the Sacramento River basin, the State Water Resources Control Board on October 11 ordered all 22 right holders in the Mill and Deer creek watersheds to stop diverting to protect drinking water and other health and safety supply needs and meet flow requirements for endangered and threatened fish species. An emergency regulation authorizing the curtailment orders was adopted by the State Water Board on Sept. 22, 2021 and approved by the Office of Administrative Law on October 4.

Why are Mill and Deer creeks significant?

Mill and Deer Creeks are tributaries to the Sacramento River, which is the largest river in California. Priority watersheds located in Tehama County, they supply water for agriculture, domestic users, the environment, fire protection, stock watering, municipalities, hydropower generation, dust control, frost protection and recreation. The creeks also have been identified as priority watersheds for sustaining anadromous Central Valley spring-run Chinook salmon and steelhead, both threatened native species. The watersheds also support Central Valley fall-run and late-fall-run Chinook salmon and endangered winter-run Chinook salmon.

What are the conditions in the watersheds?

The Sacramento River is experiencing a second consecutive dry year, with precipitation approximately half of normal levels across the upper basin. Water Years 2020 and 2021 together are the second driest two-year period on record. On May 10, 2021, Gov. Gavin Newsom issued a drought state of emergency for the counties in the Klamath River, Sacramento-San Joaquin Delta and Tulare Lake watersheds, which include Mill and Deer creeks.

How is drought impacting fish species?

Central Valley spring-run salmon are listed as threatened under the federal and California Endangered Species Acts and Central Valley steelhead are listed as threatened under the federal Endangered Species Act. Both are facing multiple stressors that are drastically reducing their populations. The Mill and Deer creeks also are vulnerable to instream flows that are inadequate to enable the passage of anadromous salmonids to the upstream reaches, particularly during drought years.



What actions are being taken to address drought conditions in the creeks?

The May 2021 proclamation directed the board, in coordination with the California Department of Fish and Wildlife, to evaluate minimum flows or other actions to protect salmon, steelhead and other native species in critical stream systems when a drought state of emergency is in effect. The board also was directed to consider emergency regulations to establish minimum instream flows if other actions, including voluntary measures, are insufficient to protect native fish. On Sept. 22, 2021, the board adopted an emergency curtailment regulation to provide minimum flows that enable upstream and downstream passage of anadromous salmonids.

What is an emergency regulation?

State agencies can adopt emergency regulations in response to situations that call for immediate action to prevent serious harm to public health, safety, peace or general welfare. Additionally, they can be adopted when a statute deems a situation to be an emergency under the Administrative Procedure Act. The California Water Code authorizes the board to: (1) adopt emergency regulations in certain drought years or when the governor proclaims a drought state of emergency to prevent the unreasonable use of water; (2) issue curtailment orders requiring water right holders and claimants to stop diverting when water is not available under their priority of right and; (3) require monitoring and reporting of diversion or use.

How long will the emergency regulation for Mill and Deer creeks remain in effect?

Emergency regulations adopted pursuant to the Water Code remain in effect for up to one year. The Mill and Deer creeks regulation became effective Oct. 4, 2021 and will expire automatically on Oct. 4, 2022 unless re-adopted due to continued drought conditions. The regulation could also be repealed prior to Oct. 4, 2022 if water supply improves.

What is a curtailment order?

A curtailment order is a directive mailed to water right holders and claimants from the State Water Board requiring them to stop diverting under their specific right or claim. The Mill and Deer creek curtailments order diverters to bypass water as necessary to maintain minimum instream flow requirements specified in the emergency regulation. If streamflow exceeds minimum flow requirements specified in the emergency regulation, diversion is permitted based on priority and basis of right.

What does the curtailment entail?

Besides ceasing diversions, right holders are required to respond to the order by completing the online [Compliance Certification Form](#) and providing additional

information about whether they plan to cease or reduce diversions to comply with the order or file for an exception for health and safety needs or non-consumptive uses. Those applying for an exception to continue diverting must certify that (1) they have completed all required forms and (2) have or will submit additional information based on the applicable exception and reporting requirements within seven days of the order issuance. Failure to respond within seven days could result in penalties and an investigation. If a water right holder or claimant believes they have received a curtailment order in error, a petition for reconsideration may be submitted to the board within 30 days.

Diverters nonetheless must comply with the order while a petition is pending. Penalties for violating the curtailment order will accrue daily.

To receive timely information about curtailments and when they are rescinded or suspended, water right holders and claimants must sign up for the board's [email distribution list](#) or regularly monitor the [website](#). The notices will not be mailed.

How will curtailment orders end?

Throughout the drought emergency, the Division of Water Rights, in coordination with the Department of Fish & Wildlife and the National Marine Fisheries Service, will continually monitor the best available information regarding fish presence within the Mill and Deer creek watersheds. When the best available information indicates that the need for minimum passage flows is no longer warranted, the board's deputy director will suspend or rescind the curtailment order.

What exceptions are available?

The regulation provides a pathway for certain diversions to continue while a curtailment order is in effect, specifically, where no alternate sources of supply are available to meet "minimum human health and safety needs" such as human consumption and sanitation. Additionally, certain non-consumptive uses that do not decrease downstream flows may continue. Those who divert via either of the exceptions described above must certify on the online [Compliance Certification Form](#) that their diversions will occur only to the extent that the diversions are for non-consumptive or minimum human health and safety uses and that they have submitted the non-consumptive use form or human health and safety use form for their water right under the Delta watershed curtailment [Order Issued to Small Diverters](#) or [Order Issued to Larger Diverters](#).

Are voluntary solutions a viable alternative to curtailments?

The board's deputy director can approve such agreements, provided that diversions subject to the agreements are reasonable, do not injure other lawful users of water, and provide the required flows at the same or greater level of protection to the fishery as the drought minimum flow requirements. Additionally, voluntary agreements can be

proposed by water users and Fish & Wildlife and the National Marine Fisheries Service and submitted to the deputy director for approval.

What is the enforcement process?

Those who illegally divert when there is insufficient water under their priority of right are subject to potential enforcement actions, including fines of up to \$1,000 per day and \$2,500 per acre-foot of unauthorized water. Before the board takes enforcement action, diverters are notified and afforded an opportunity for a hearing. Generally, the process is conducted as follows:

- Enforcement staff selects a site for investigation, possibly based on complaints received, evidence of a violation, or violations of other water rights requirements (such as lack of annual water use reporting).
- Staff investigates with a site visit or a desktop analysis.
- If the curtailment order has been violated, staff issues a draft Administrative Civil Liability complaint and/or draft cease and desist order to the water right holder.
- The water right holder will have 20 days to accept the complaint (fine) or request a hearing before the board's Administrative Hearing Office.

Those who have questions about the Mill and Deer creek curtailments can email board staff at DWR-MillDeerDrought@waterboards.ca.gov. Emails will be answered as quickly as possible. For information about ongoing drought efforts in other regions of the state, visit the [Drought](#) webpage.

(This fact sheet was last updated on Oct. 13, 2021)