

§ 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 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 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 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.

- (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 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 (bc)(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.

(ed) 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 (b).
- (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.